



8 Mt. Pleasant, South Carolina 29464-1792 BY: MR. RONALD L. MOTLEY  
9  
10 For the Defendant Lorillard Tobacco Company:  
11 SHOOK, HARDY & BACON 1201 Main  
12 Kansas City, Missouri 66206 BY: MS. GAY L. TEDDER  
13 MR. JERAMI D. KEMNITZ MR. ANDREW CARPENTER  
14  
15 For the Defendant Brown & Williamson Tobacco:  
16 KIRKLAND & ELLIS  
17 200 East Randolph Drive Chicago, Illinois 60601  
18 BY: MR. DAVID BERNICK  
19  
20 For the Council for Tobacco Research:  
21 JENKENS & GILCHRIST, P.C. 1100 Louisiana Street, Suite 1800  
22 Houston, Texas 77002 BY: MR. MARK E. LOWES  
23  
24

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1 For the witness:  
2 JONES & KELLER, P.C. World Trade Center  
3 1625 Broadway, 16th Floor Denver, Colorado 80202  
4 BY: MR. DAVID BYASSEE  
5 Also Present: Mr. John Baden  
6 Ms. Kelly Miller, videographer Ms. Ramona  
Emerson, videographer

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1 PAUL KOTIN, M.D.,  
2 after having been previously duly sworn under  
3 oath, was questioned and continued testifying as  
4 follows:  
5 EXAMINATION  
6 BY MS. TEDDER:  
7 Q. Dr. Kotin, my name is Gay Tedder, and I  
8 represent Lorillard Tobacco Company in this  
9 litigation. And I think you and I met yesterday.  
10 A. Yes, ma'am.  
11 Q. And I'm here today just to follow up on  
12 some issues that Mr. Motley raised and to ask you  
13 some additional questions. I know that you need to  
14 take breaks at certain times, and I can also tell  
15 you that I get involved in my questions, so if I  
16 don't ask you if you need a break, you or  
17 Mr. Byassee please remind me, because I lose track

18 of time. So --  
19 A. I appreciate that. Thank you.  
20 Q. Just let me know when you need a break at  
21 any time.  
22 I'm going to hand you what has been marked  
23 for this deposition as Exhibit A.  
24 (Exhibit A marked.)

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1 Q. And I'll ask you to take a real quick look  
2 at that and ask if you have ever seen that before.  
3 MS. DIX: Is this something you just  
4 marked for purposes of this deposition?  
5 MS. TEDDER: Yes.  
6 MS. DIX: Do you have copies for us?  
7 MS. TEDDER: Yes. I just handed it to  
8 you.  
9 MR. MOTLEY: Sorry.  
10 MS. TEDDER: That's all right.  
11 A. Yes, ma'am, I have seen that.  
12 Q. I'm sorry?  
13 A. I did see that. Yes, ma'am.  
14 Q. You did see it. All right. Is this a  
15 subpoena that was served on you in connection with  
16 this litigation?  
17 A. Yes, ma'am.  
18 Q. Okay. If you will turn to the very  
19 last -- second-from-the-last page of this.  
20 A. Yes, ma'am.  
21 Q. This asks -- this subpoena asked you to  
22 produce some documents in this case. Did you look  
23 for documents to produce?  
24 A. I didn't, because I know I didn't have

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1 them, ma'am.  
2 Q. Okay. You didn't look at all?  
3 A. Yes, I looked, but I wouldn't know where  
4 to look, because I don't have them.  
5 Q. Okay. So you didn't have a copy, for  
6 example, of your CV, which is one of the things that  
7 was requested that I noticed you produced yesterday  
8 to Mr. Motley?  
9 A. Yes, I have -- I did have a copy of my CV.  
10 Q. Okay.  
11 A. And it is here.  
12 Q. Okay. But you didn't produce that in  
13 response to the subpoena.  
14 A. No, ma'am. I just --  
15 Q. Okay.  
16 A. -- had it here.  
17 Q. Can you tell me where you looked for  
18 documents?  
19 A. On my bookcases, my files, my desk.  
20 Q. All in your home; is that right?  
21 A. All in my home.  
22 Q. And you didn't find any documents --  
23 A. None of those that were listed here.  
24 Q. -- requested by the subpoena? Okay. You

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1 used to work for Johns-Manville; correct?  
2 A. I beg pardon?

3 Q. You used to work for Johns-Manville;  
4 correct?  
5 A. Yes, ma'am.  
6 Q. And you're retired from there?  
7 A. Yes, ma'am.  
8 Q. When did you retire?  
9 A. In 1981, when I was 65.  
10 Q. Okay. And at the time you left  
11 Johns-Manville, had you accumulated some files and  
12 materials that concerned your work while you were  
13 there?  
14 A. Yes, ma'am.  
15 Q. And did you take any of that with you when  
16 you left?  
17 A. Yes, ma'am.  
18 Q. And can you tell me what happened to that?  
19 A. Well, from 1981 until the present, my wife  
20 and I have moved some nine times from a home in  
21 Denver to a home that was less than half the size of  
22 that, and we disposed of anything and everything  
23 that was disposable. And the fact that we were both  
24 getting older, the less encumbrances we had, the

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1 simpler life would be. I was retired, my wife --  
2 family, of course, all gone, children,  
3 grandchildren. So the less we had, the happier we  
4 knew we would be. And in fact, that's how it turned  
5 out.  
6 Q. Okay. So at some point in time you  
7 disposed of all those documents, is what you're  
8 telling me?  
9 A. Yes, ma'am.  
10 Q. You don't have any of them now?  
11 A. No, ma'am.  
12 Q. Do you know if Johns-Manville retained  
13 copies of those documents?  
14 A. Yes, ma'am.  
15 Q. Yes, you know, and the answer is that they  
16 did or they didn't?  
17 A. They did, I believe.  
18 Q. All right. Thank you.  
19 MR. MOTLEY: Can I ask a question? When  
20 you said "those documents," was those defined  
21 as those that he took with him when he left,  
22 but has subsequently disposed of?  
23 MS. TEDDER: That was the way I intended  
24 "those."

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1 MR. MOTLEY: That's what I thought you  
2 meant.  
3 THE WITNESS: Yes.  
4 Q. You stated yesterday that you currently  
5 work as a consultant a little bit.  
6 A. Yes, ma'am.  
7 Q. Is that right? Can you tell me what that  
8 consulting work consists of?  
9 A. Well, I'm chairman of the Beryllium  
10 Industry Science Advisory Committee.  
11 Q. Okay. And --  
12 A. And that's it.  
13 Q. Okay. And how much time do you put into

14 something like that?  
15 A. We meet three times a year for two days.  
16 Q. Okay. All right. You also talked a  
17 little bit yesterday about the fact that you had  
18 been -- you had previously spoken with Ms. Dix in  
19 this case; is that correct?

20 A. Yes, ma'am.

21 Q. Can you tell me whether or not you were  
22 first contacted by Ms. Dix or someone else, or  
23 whether you contacted either the Johns-Manville  
24 Trust or counsel in this case?

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1 A. I was contacted.

2 Q. And do you know who contacted you?

3 A. I really don't remember. There were so  
4 many people involved that who actually did the  
5 contacting, I can't recall.

6 Q. Do you know when that was?

7 A. Oh, sometime in 1999, I believe.

8 Q. What would your best guess be about when  
9 in 1999?

10 A. And it would be a guess. Mid-1999,  
11 perhaps. But that is a guess.

12 Q. Was that by phone or in writing; do you  
13 know?

14 A. Initially by phone.

15 Q. Okay. And you have had some meetings with  
16 Ms. Dix?

17 A. Yes, ma'am.

18 Q. You said yesterday maybe three to four  
19 times; is that correct?

20 A. Correct.

21 Q. All right. Is there anyone else that you  
22 met with from Ms. Dix' firm or anyone representing  
23 the plaintiffs' counsel?

24 A. Yes, Mr. Steve Kazan.

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1 Q. And when did you meet with Mr. Kazan?

2 A. Oh, five, six months ago, perhaps. Could  
3 be four or five months, something like that.

4 Q. Did you meet with Mr. Kazan at the same  
5 time you met with Ms. Dix?

6 A. Yes, ma'am.

7 Q. Each time that you met with Ms. Dix, was  
8 Mr. Kazan present?

9 A. No, ma'am.

10 Q. How many times total did you meet with  
11 Mr. Kazan?

12 A. I think he was there twice.

13 Q. Okay. You met twice with both Mr. Kazan  
14 and Ms. Dix; am I understanding that correctly?

15 A. Yes, ma'am.

16 Q. Was anyone else present during those two  
17 meetings?

18 A. No, ma'am. That was the three of us.

19 Q. And you met once with Ms. Dix; is that  
20 correct?

21 A. Yes.

22 Q. Is there anyone else that you met with in  
23 connection with this case?

24 A. Yes.

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1 Q. And who was that?

2 A. Mr. Byassee.

3 Q. And when did you meet with Mr. Byassee?

4 A. Oh, several months ago, again. I can't  
5 remember exactly when, but it was within that  
6 period. And there was another attorney, a young  
7 lady who I think is actually employed by the trust  
8 that I don't recall her name.

9 Q. Someone employed by the trust?

10 A. I think so.

11 Q. How many meetings in total did you have  
12 with Mr. Byassee?

13 A. One. I think this is the second time I'm  
14 seeing Mr. Byassee.

15 Q. Okay. Now, the meetings that you had with  
16 Ms. Dix and Mr. Kazan, the two times you met with  
17 them -- can you tell me approximately how long those  
18 meetings lasted?

19 A. Well, again, certainly no more than two  
20 hours. That represents about my stamina.

21 Q. So you just met with them a couple hours  
22 each time?

23 A. Yes, ma'am.

24 Q. Okay. And what about the last time you

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1 met with Ms. Dix alone? Would that be the same  
2 thing, probably a couple more hours?

3 A. Yes. Certainly no more, if that much.

4 Q. Did Ms. Dix or Mr. Kazan indicate to you  
5 that they represented you?

6 A. Not at all. No.

7 Q. Can you tell me what the substance of the  
8 conversations were that you had with Ms. Dix and  
9 Mr. Kazan?

10 A. Well, they related to my knowledge of  
11 activities that were going on while I was working  
12 for Johns-Manville.

13 Q. Okay. Can you tell me everything you  
14 recall about those discussions?

15 A. Well, they related to the no-smoking  
16 policy and all of the aspects of the no-smoking  
17 policy. The basis for it, the justification for it.

18 Q. Any other topics than the no-smoking  
19 policy? Any other topics that you discussed?

20 A. Yes. We also discussed my association  
21 with the area of smoking and health.

22 Q. All right. Would that include CTR?

23 A. Yes, ma'am.

24 Q. Okay. Did you give them any documents?

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1 A. No, ma'am.

2 Q. Did they give you any documents to review?

3 A. Yes, ma'am.

4 Q. Do you recall what those documents were?

5 A. Not really, no.

6 Q. Do you recall any of them?

7 A. I recall those that were shown to me  
8 yesterday that -- the showing of the documents  
9 served as an aide-memoire, so that I could recall.

10 Q. Do you think you saw more documents than  
11 those that you just saw yesterday?

12 A. Yes, ma'am.

13 Q. You did see more? Do you recall any of  
14 the ones, the more documents that they were?

15 A. Not specifically, no, ma'am.

16 Q. Do you know any of the topics they dealt  
17 with?

18 A. The topic of asbestos exposure, smoking  
19 and health, the Johns-Manville no-smoking program.

20 Q. Were any of those tobacco company  
21 documents?

22 A. Yes, ma'am.

23 Q. Do you recall specifically any of the  
24 tobacco company documents that you saw?

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1 A. No, I just know that the letterheads were  
2 several of the tobacco companies.

3 Q. All right. Your attorney here today is  
4 Mr. Byassee. Did you retain Mr. Byassee, or is  
5 someone paying for him?

6 A. Someone is paying for Mr. Byassee.

7 Q. And do you know who that is?

8 A. I assume. I don't know.

9 Q. What's your assumption?

10 A. I really have none, because I just don't  
11 know.

12 Q. Well, you know he's being paid by someone;  
13 correct?

14 A. Correct.

15 Q. And do you understand that to be the trust  
16 or the plaintiffs in this case?

17 A. I guess so, but I don't know.

18 Q. Why don't you tell me what you have been  
19 told about how Mr. Byassee --

20 A. It never came up. I was not told  
21 anything.

22 Q. But you're not paying his bill. That's  
23 all you know?

24 A. I'm -- that's all I know.

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1 Q. Someone contacted you, asked you to  
2 testify in this case, and as far as you know, you  
3 have been provided counsel.

4 A. Correct.

5 Q. All right. Have you talked to any  
6 employees or people connected with the Manville  
7 Trust in connection with this case?

8 A. Other than my meetings with Ms. Dix that  
9 we referred to before, none.

10 Q. And the one other person that you can't  
11 remember from the Manville Trust, the woman?

12 A. She was at one meeting, yes, ma'am.

13 Q. Anyone else that you recall?

14 A. No, ma'am. Not that I recall.

15 Q. Have you spoken with any of the trustees  
16 of the trust?

17 A. No, I don't know who they are.

18 Q. Okay. All right. You said yesterday that  
19 you joined Manville in 1974; is that correct?

20 A. Correct, ma'am.

21 Q. Okay. And that was about ten years after  
22 Dr. Selikoff's first study that linked asbestos and  
23 cancer; is that right?

24 A. 1964, I believe that was -- no, actually,

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1 the 1964 paper was entitled "Asbestos, Smoking and  
2 Neoplasia." That was the paper that first provided  
3 the scientific basis for the association of asbestos  
4 and smoking as co-factors.

5 Q. And in that 1964 report, Dr. Selikoff  
6 established asbestos as a carcinogen; isn't that  
7 correct?

8 A. No. Asbestos as a carcinogen was  
9 established, I would say, some three or four years  
10 before that.

11 Q. Okay. At the time that you went to work  
12 for Manville, they were the world's largest producer  
13 of asbestos products; is that correct?

14 A. That's what I think, yes.

15 Q. And you, I think, said yesterday -- and  
16 correct me if I'm wrong -- that you acted as the  
17 medical director and the senior vice president for  
18 health, safety, and environment?

19 A. Correct.

20 Q. Okay. And as medical director you were  
21 responsible for the health and safety of the company  
22 employees; is that correct?

23 A. Yes, ma'am.

24 Q. So it was your responsibility that

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1 Manville did everything that it could to ensure the  
2 workers' safety?

3 A. Correct.

4 Q. Including protecting the workers from  
5 asbestos?

6 A. Yes, ma'am.

7 Q. All right. Among other things that you  
8 did during that time, you testified for Manville in  
9 a number of asbestos cases that were brought by  
10 employees; is that correct?

11 A. That's correct.

12 Q. And you actually gave depositions in a  
13 number of those cases; is that correct?

14 A. Yes, ma'am.

15 Q. Okay. In fact, isn't it true that  
16 Mr. Motley had deposed you in those cases?

17 A. Yes, ma'am.

18 Q. And at that point in time, instead of  
19 being -- you were on opposite sides of the table; is  
20 that right?

21 A. That would be one way of putting it, yes,  
22 ma'am.

23 Q. All right. And he was often the attorney  
24 for the asbestos worker; is that right?

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1 A. He was the attorney for the asbestos  
2 worker.

3 Q. And you were testifying on behalf of the  
4 company.

5 A. Yes, ma'am.



6 Q. Correct? Okay. Dr. Kotin, isn't it true  
7 that you previously testified that you personally  
8 formed a conclusion as early as 1956 that asbestos  
9 exposure alone caused cancer?

10 A. Of certain types, yes, ma'am.  
11 Mesothelioma, specifically.

12 Q. Well, in previous testimony you didn't  
13 limit that to mesothelioma, did you?

14 A. I don't recall.

15 Q. Well, let me see if I can refresh your  
16 recollection, then. Do you recall being deposed by  
17 Mr. Motley in a series of asbestos cases pending in  
18 Charleston, South Carolina, in 1979?

19 A. I know I was deposed by him. I don't  
20 recall the year or the cases.

21 Q. Okay. Well, now, let me represent to you  
22 that what I'm looking at is a copy of a deposition  
23 of Paul Kotin dated October 23, 1979, in the In re:  
24 asbestos cases pending in Charleston, South

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1 Carolina. This is volume 2. And on page 20,  
2 Dr. Kotin, I'm going to read to you a question and  
3 answer, and I'd like for you to tell me -- and  
4 you're free to look at this -- if this isn't the  
5 question you were asked and the answer you gave.

6 "Question: Thank you, Doctor. Now,  
7 Doctor, do you agree that asbestos is a  
8 cancer-causing substance?

9 "Answer: Yes, sir.

10 "Question: And you came to this  
11 conclusion personally in 1956; isn't that correct?

12 "Answer: At about that time. Yes, sir.

13 "Question: Well, now, Doctor, you wrote  
14 in a medical journal in 1956 that it caused cancer.

15 "Answer: Yeah. I just wasn't sure when  
16 it was. 1956 or 1955."

17 Did I read that correctly?

18 A. Yes, ma'am.

19 Q. And at that point in time you didn't limit  
20 that to mesothelioma, did you, in this answer?

21 A. In that answer, no.

22 Q. All right. Thank you. Okay. You have  
23 also testified that Johns-Manville was aware as  
24 early as 1930 that asbestos exposure was harmful to

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1 health; isn't that correct?

2 A. Yes, ma'am.

3 Q. And do you recall that Ken Smith was the  
4 medical director for Johns-Manville in the 1930s?

5 A. I was told so, yes, ma'am.

6 Q. And you have previously testified about  
7 that; is that correct?

8 A. Yes, ma'am.

9 Q. Okay. And you have testified about a  
10 survey which Dr. Smith made at the Jeffry Mine.

11 A. Yes, ma'am.

12 Q. And that survey was conducted to see if  
13 the workers were suffering from asbestosis; isn't  
14 that correct?

15 A. Yes, ma'am.

16 Q. Okay. And he found, in fact, some of

17 those workers to be suffering from asbestosis;  
18 correct?

19 A. Yes, ma'am.

20 Q. And asbestosis is a disease that's caused  
21 by asbestos; correct?

22 A. Yes, ma'am.

23 Q. Okay. And you also talked about the fact  
24 that Johns-Manville didn't tell the workers that

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1 participated in that survey that they had  
2 asbestosis.

3 A. I was told that. I was not there, of  
4 course, or I don't know that firsthand.

5 Q. Sure, but that's what you testified about;  
6 correct?

7 A. It's in the record, yes, ma'am.

8 Q. Okay. Would you agree that people should  
9 be told if they have an illness?

10 A. That's an omnibus question that can't be  
11 answered because some people, telling them some  
12 things is devastating. Other people, telling them,  
13 it's intrinsic to their being part of getting at it.  
14 So I don't think there's -- the answer to your  
15 question is: You can't answer that, because it has  
16 to be individualized to each person.

17 Q. Don't you think most people have a right  
18 to know if they have an illness?

19 A. If they wish to know, yes. Not all  
20 patients wish to know.

21 Q. Would you agree that the majority of  
22 people would probably like to know if they're sick?

23 A. Yes, ma'am.

24 Q. Would you agree that it would be

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1 appropriate to tell people if they're sick?

2 A. As I said earlier, it depends who the  
3 person was.

4 Q. Most people you would tell; correct?

5 A. Yes, ma'am, as you asked before.

6 Q. We talked yesterday just a little bit  
7 about warning labels. Do you remember that?

8 A. Yes, ma'am.

9 Q. Okay. Can you tell me if the government  
10 has established over time a maximum level of  
11 asbestos exposure to which people can be exposed?

12 A. Yes, ma'am.

13 Q. And is that called the threshold limit  
14 value?

15 A. Yes, ma'am.

16 Q. And can you basically tell me what that  
17 is?

18 A. It is the --

19 MR. MOTLEY: Excuse me. At what time?

20 MS. TEDDER: Well, let's just kind of say  
21 historically.

22 Q. From the late 1930s to the mid-1960s.

23 A. It is the level exposure that -- at the  
24 time-weighted average that is consistent with no

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1 adverse effect.

2 Q. So it's kind of the number of particles,  
3 at one point, dust --

4 A. Fibers, yes, ma'am.

5 Q. -- later fibers, that somebody can be  
6 exposed to without a harmful effect?

7 A. Yes, ma'am.

8 Q. And that setting, I think, is -- I mean  
9 that level -- I think the point for Mr. Motley's  
10 question: It's changed over time; is that correct?

11 A. As more knowledge has become accumulated,  
12 it has changed, yes, ma'am.

13 Q. And do you recall testifying that  
14 historically it was 5 million particles per cubic  
15 feet from 1938 to the late 1960s?

16 A. Yes, ma'am.

17 Q. So in about 1938, obviously, the threshold  
18 level would have been the 5 million particles per  
19 cubic foot.

20 A. Yes, ma'am.

21 Q. Per cubic foot?

22 A. Yes, ma'am.

23 Q. And you have testified previously that the  
24 asbestos industry, including Johns-Manville, knew in  
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1 1938 that the threshold limit value was 5 million  
2 particles per cubic foot; correct?

3 A. Yes, ma'am.

4 Q. You have also testified that asbestos  
5 companies should have warned workers or users of  
6 products to avoid levels of exposure above that;  
7 correct?

8 A. Yes, ma'am.

9 Q. And you have testified that despite  
10 knowing the danger, that you knew of no warning  
11 label or communication by any asbestos company  
12 between 1938 and 1964 to insulation workers to avoid  
13 such a threshold, an exposure above the threshold  
14 level; is that correct?

15 A. Yes, ma'am.

16 Q. Isn't it also true, Dr. Kotin, that you  
17 testified about the fact that JM withheld  
18 publication of studies which found that asbestos  
19 caused disease in its plants?

20 A. I would like to see that.

21 Q. Okay. Well, we're going to talk about  
22 that in just a second. Let me just ask you --  
23 perhaps this will refresh your recollection -- if  
24 you recall the Hemeon report by the Industrial

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1 Hygiene Foundation.

2 A. Yes, ma'am.

3 Q. And was that a study commissioned by the  
4 Asbestos Textile Institute in 1947?

5 A. I don't recall.

6 Q. Okay. Let's see if this refreshes your  
7 recollection. All right. I am quoting from volume  
8 3 of the same deposition In re: asbestos cases,  
9 deposition of Paul Kotin, dated October 24, 1979,  
10 given in the asbestos cases pending in South  
11 Carolina that I talked about earlier, and I can just  
12 show you this, Doctor.

13 MS. DIX: What page are you at?  
14 MS. TEDDER: I'm on page 58, line 20,  
15 Laurie.  
16 Q. The question starts out: "Okay. I turn  
17 your attention, sir, to Exhibit 37." And if you  
18 want to see Exhibit 37, Dr. Kotin, it's right there:  
19 "And is that entitled Industrial Hygiene Foundation  
20 of America, Report of Preliminary Dust Investigation  
21 for Asbestos Textile Institute?"  
22 A. Yes, ma'am.  
23 Q. And it's dated June 1947?  
24 A. Yes, ma'am.

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1 Q. Okay. And this question says, "Okay. I  
2 turn your attention, sir, to Exhibit Number 37. And  
3 that is entitled The Industrial Hygiene Foundation  
4 of America. Are you familiar with the Industrial  
5 Hygiene Foundation?"  
6 Your answer: "Yes, sir."  
7 "And it's entitled Report of Preliminary  
8 Dust Investigation for the Asbestos Textile  
9 Institute. Are you familiar -- Question: Are you  
10 familiar with the Asbestos Textile Institute?"  
11 "Answer: I have been informed, yes. I  
12 know what it is."  
13 A. Yes, ma'am.  
14 Q. Does that refresh your recollection? The  
15 purpose of the Hemeon report, which was Exhibit  
16 Number 37, was to determine whether asbestosis  
17 existed in plants; is that correct?  
18 A. Yes, ma'am.  
19 Q. And the study found actually that there  
20 were workers with asbestosis in various plants?  
21 A. Yes, ma'am.  
22 Q. And the Hemeon report recommended a  
23 step-by-step program to eliminate asbestosis in  
24 plants; is that correct?

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1 A. Yes, ma'am.  
2 Q. And that had a number of recommendations.  
3 For example, reducing dust levels, periodic medical  
4 exams, and some other suggestions; is that correct?  
5 A. Yes, ma'am.  
6 Q. And in addition to the written report  
7 which is Exhibit Number 37, Dr. Hemeon also made an  
8 oral presentation to the Asbestos Textile Institute;  
9 is that correct?  
10 A. I'm unaware of that.  
11 Q. Okay. Do you recall having testified to  
12 that before?  
13 A. I don't recall.  
14 Q. Okay. Well, then, let's see if just  
15 looking at this will refresh your recollection.  
16 Okay.  
17 MS. TEDDER: I am looking, Laurie, at page  
18 87, at about line 17.  
19 Q. And in this deposition, Dr. Kotin, down  
20 here, the question is: "Okay, if I could mark the  
21 minutes of the Asbestos Textile Institute."  
22 If you would, sir, this is Exhibit 40 and  
23 41, and, again, if you want to look back at those,

24 they should be back there. Can I help?

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page 120

1 A. I have 40 right here, ma'am. Okay. And  
2 41. Thank you.

3 Q. And in that deposition, Mr. Motley is  
4 asking you if you would look at 40 and 41, the  
5 minutes of the Air Hygiene Committee of the Asbestos  
6 Textile Institute, dated November 19, 1947. "I  
7 would ask you to look at that for a second. I don't  
8 have but one copy, Doctor, so if you don't mind, I'd  
9 like to stand here.

10 "Question: Do you see where it is  
11 reported that Mr. Hemeon came into the committee?"

12 Your answer, "Yes, sir."

13 A. I saw it. Yes.

14 Q. So those minutes reflect that he did, in  
15 fact, make an oral presentation; is that correct?

16 A. Yes. I wasn't there, but yes, ma'am.

17 Q. Sure, but you have talked about that  
18 before in this deposition with Mr. Motley; correct?

19 A. Yes.

20 Q. Okay. And Johns-Manville belonged to the  
21 Asbestos Textile Institute; correct?

22 A. At that time, yes, ma'am.

23 Q. And the Asbestos Textile Institute, I  
24 think you testified here, ultimately rejected

page 120

page 121

1 Dr. Hemeon's suggestions for improvements.

2 A. I'd like to see. I don't recall that.

3 Q. Okay. Well, we can just look again. All  
4 right.

5 MS. TEDDER: I'm on page 89, the bottom of  
6 page, Laurie. I'm sorry, the numbers are  
7 faded. Approximately 22 or so.

8 Q. Question by Mr. Motley. "Dr. Kotin, does  
9 Exhibit 41 indicate that the Asbestos Textile  
10 Institute turned down and rejected the IHF dust  
11 study proposed in June of '47 and again in November  
12 of '47?"

13 That was the question. Your answer --  
14 after an objection, question, "Does it not indicate  
15 the study was rejected?"

16 "Answer: Yes."

17 A. Yes.

18 Q. So it was, in fact, rejected.

19 A. Yes, ma'am.

20 Q. And those suggestions weren't implemented;  
21 correct?

22 A. Correct. Yes, ma'am.

23 Q. All right. And the Manville workers  
24 weren't told about that study, were they?

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page 122

1 A. I wouldn't know.

2 Q. Well, you have testified previously that  
3 the Hemeon report was never published; is that  
4 correct?

5 A. That's right. But...

6 Q. All right. Do you know David Austern,  
7 who's a trustee -- or is general counsel for the  
8 trust in this case?

9 A. I have met him, yes, ma'am.  
10 Q. And did you meet him in connection with  
11 your testimony in this case?  
12 A. I don't believe so. I met him before.  
13 Q. Okay. Did you know that Mr. Austern has  
14 given a deposition in this case?  
15 A. I do not.  
16 Q. Well, he has, and he was asked a number of  
17 questions about Manville and its conduct with  
18 respect to asbestos workers. I just want to read  
19 you this.  
20 MR. MOTLEY: Excuse me, ma'am. I'm not  
21 objecting, but would you clarify when you say  
22 Manville, you're talking about Johns-Manville  
23 and not what later became the Manville Trust,  
24 for the record?

page 122

page 123

1 MS. TEDDER: For the record, the  
2 Johns-Manville that I am referring to is  
3 Johns-Manville Corporation, but the trust is  
4 obviously the successor.  
5 MR. MOTLEY: Well, that's not a fair  
6 observation, ma'am, but that's for us lawyers  
7 to --  
8 MS. TEDDER: They are the entity that  
9 succeeded after the bankruptcy.  
10 MR. MOTLEY: We'll debate that at some  
11 point.  
12 MS. TEDDER: We have our respective points  
13 of view.  
14 Q. "Question: And in fact, the claim that  
15 was made was that Manville and other asbestos  
16 manufacturers collectively were responsible for the  
17 fact that literally hundreds of thousands of people  
18 were overexposed to asbestos in the '40s, '50s,  
19 '60s, and the '70s, and got sick as a result. True?  
20 "Answer: I'm not sure. I don't know what  
21 you mean by 'overexposed,' but I will acknowledge  
22 that had they -- had Manville and the other  
23 manufacturers announced to the public what they knew  
24 about dose response rates in asbestos exposure,

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1 fewer people would have been exposed to the extent  
2 they were exposed, and fewer people would have  
3 gotten sick.  
4 "Question: Okay. In fact, given the  
5 scope of the claims we're talking about, not just  
6 fewer people, but literally tens of thousands, if  
7 not hundreds of thousands, of lives would have been  
8 saved; correct?  
9 "Answer: I have no doubt that's true."  
10 That's testimony by David Austern, general  
11 counsel for the trust. Do you agree with that  
12 statement?  
13 A. Yes, sir. Yes, ma'am.  
14 Q. Do you want to take a break?  
15 A. We're doing okay.  
16 MR. BYASSEE: A few more minutes.  
17 Q. Just tell me. Otherwise I may forget.  
18 A. I sure will. Thanks very much.  
19 Q. We talked a little bit yesterday. I want

20 to turn to the issue of the smoking ban. We talked  
21 about that. And you kind of testified, I think,  
22 yesterday that Manville began instituting the  
23 plant-wide smoking bans in about 1976; is that  
24 correct?

page 124

page 125

1 A. The end of the year, I believe so, yes,  
2 ma'am.

3 Q. And one of the facilities that we talked  
4 about yesterday where JM implemented the complete  
5 smoking ban in 1976 was the JM manufacturing plant  
6 in Denison, Texas; is that correct?

7 A. Yes, ma'am.

8 Q. And I just want to make clear, but is it  
9 your understanding that one of the unions filed a  
10 grievance against Johns-Manville about the proposed  
11 smoking ban?

12 A. Yes, ma'am.

13 Q. And do you understand that Johns-Manville  
14 and the union eventually arbitrated that matter?

15 A. Yes, ma'am.

16 Q. And do you have any understanding of when  
17 the arbitration actually happened?

18 A. I don't recall.

19 Q. If the record reflects it was the fall of  
20 1976, would you have any reason to disagree?

21 A. No, ma'am.

22 Q. Okay. You understood that the arbitrator  
23 ruled in the union's favor; is that correct?

24 A. Yes, ma'am.

page 125

page 126

1 Q. Did you participate in writing any of the  
2 documents that Johns-Manville submitted to the  
3 arbitrator?

4 A. Yes, ma'am.

5 Q. And can you tell me what you participated  
6 in writing?

7 A. The rationale, from its beginning to an  
8 end, to support the necessity for instituting a  
9 smoking ban, its justification at the level of  
10 clinical medicine, at the level of preventive  
11 medicine, and the general outline of a protocol for  
12 the implementation of the ban.

13 Q. Just to clarify for my purposes,  
14 Dr. Kotin, are you now talking about the smoking ban  
15 itself or the -- I'm talking about the subsequent  
16 briefs and memoranda that might have been submitted  
17 in connection with the arbitration.

18 A. I have nothing to do with any of the  
19 memoranda or briefs submitted in the arbitration.

20 Q. Okay. All right. So the things you're  
21 referring to --

22 A. The appeal, not the arbitration.

23 Q. You had something to do with writing  
24 documents in the arbitration?

page 126

page 127

1 A. No. My documents were used as the basis  
2 for supporting --

3 Q. The ban?

4 A. -- the ban.

5 Q. Okay. At the time of the arbitration, did  
6 you ever read or review any of the briefs or legal  
7 documents submitted by Johns-Manville or the union?

8 A. No, ma'am.

9 Q. I'm going to hand you, Dr. Kotin, what's  
10 marked for identification as Exhibit B, and you  
11 might want to take a minute to look through that.

12 (Exhibit B marked.)

13 Q. It is several documents, but I'll give you  
14 a minute to look at it, and we can chat about it.

15 A. This -- I don't recall seeing this  
16 document at the time.

17 Q. Okay. All right. Well, just to clarify  
18 for the record here, it is a memorandum of points  
19 and authorities in support of plaintiff's cross  
20 motion for summary judgment in the Eastern District  
21 of Texas, Tyler Division, of the U.S. District  
22 Court, and also has attached a decision of the  
23 arbitrator dated December 6, 1976. It contains an  
24 arbitration brief filed on behalf of the union, and

page 127

page 128

1 also a brief filed on behalf of Johns-Manville.

2 Do you recall being shown any of these  
3 documents?

4 A. No, ma'am.

5 Q. When Ms. Dix was showing you documents,  
6 you don't recall seeing these?

7 A. I don't recall seeing these.

8 Q. Okay. I'm going to ask you to look at --  
9 I think these pages are numbered in the bottom,  
10 small numbers.

11 A. Oh, yes, ma'am.

12 Q. If you take a look at page 127 --

13 A. Yes, ma'am.

14 Q. All right. Under Roman numeral 3, about  
15 the third line down, it says, irrefutable, dot, dot,  
16 dot. Then it says, "Smoking in an asbestos  
17 environment enormously increases the risk of lung  
18 cancer."

19 Is that consistent with your understanding  
20 of the rationale for JM's decision to prohibit  
21 smoking in its plants?

22 A. Part of the rationale, yes, ma'am.

23 Q. And this brief reflects that's the  
24 position that Johns-Manville took at the

page 128

page 129

1 arbitration; is that correct?

2 A. Yes, ma'am.

3 Q. And that's the same position I think you  
4 said yesterday -- and correct me if I'm wrong --  
5 that you took with the workers in the unions when  
6 you were trying to educate them?

7 A. Yes, ma'am.

8 Q. And page 127 -- I'm sorry, are you still  
9 on that page?

10 A. Yes, ma'am. I am now. Yes, ma'am.

11 Q. I'm sorry.

12 MR. MOTLEY: I don't know if you meant  
13 five minutes or not, but if you do, your voice  
14 is --

15 A. Would this be convenient for you?



16 Q. Oh, sure. If it's convenient for you,  
17 it's convenient for me.  
18 A. Thank you very much.  
19 (A recess was taken.)  
20 Q. Dr. Kotin, we were just on a break. Did  
21 you have any conversations with Mr. Motley or  
22 Ms. Dix during this break?  
23 A. Not at -- no, ma'am.  
24 Q. Okay. We talked earlier about

page 129

page 130

1 Dr. Selikoff and the article that he wrote in 1964.  
2 A. Yes, ma'am.  
3 Q. He actually wrote two articles; isn't that  
4 correct? One in 1964, and one in 1968; is that  
5 correct?  
6 A. As I recall, yes, ma'am.  
7 Q. Okay. And the article -- the names of  
8 those articles will reflect whatever the articles  
9 are; is that correct?  
10 A. Yes, ma'am.  
11 Q. I was just before the break asking you a  
12 couple of questions about Exhibit B, and we were on,  
13 I think, page 127 when we stopped.  
14 At the bottom of page 127, it indicates  
15 that there is a quote, second-from-the-last line,  
16 from Dr. Selikoff. And it references Dr. Selikoff,  
17 in fact, says, "Dr. Selikoff's conclusions and  
18 recommendations speak for themselves." Do you see  
19 that?  
20 A. Yes, ma'am.  
21 Q. "For asbestos workers, the increase in  
22 risk is tremendous."  
23 A. Yes, ma'am.  
24 Q. "Asbestos workers who do not now smoke

page 130

page 131

1 should never begin. Those who do smoke should stop  
2 immediately."  
3 Is it your understanding that this brief  
4 relies on Dr. Selikoff for authority for the  
5 position that they outlined with respect to smoking?  
6 A. Certainly part of the basis, yes, ma'am.  
7 Q. And do you have any understanding whether  
8 prior to the arbitration, Johns-Manville ever  
9 expressed a different opinion regarding the  
10 conclusions found in Dr. Selikoff's 1968 report?  
11 A. I don't know of any.  
12 Q. I'm going to ask you to take a real quick  
13 look at page 110.  
14 MR. MOTLEY: Of B?  
15 MS. TEDDER: Of Exhibit B, yes,  
16 Mr. Motley. Thank you.  
17 A. Yes, ma'am.  
18 Q. At the bottom of the page, the last full  
19 paragraph --  
20 A. Uh-huh.  
21 Q. -- which starts out, "The union's witness,  
22 William Boone, testified to the employees' feelings  
23 on the no-smoking rule."  
24 A. Yes, ma'am.

page 131

page 132

1 Q. It goes on to state, "He stated that  
2 smokers and non-smokers alike felt that along with  
3 the union representatives, this is a right that has  
4 been afforded to them since the plant was opened and  
5 it should only be taken away in collective  
6 bargaining"; is that correct?

7 A. That's what I'm reading, yes, ma'am.

8 Q. Okay. And so he's saying that the issue  
9 is a collective bargaining issue; is that correct?

10 A. Yes, ma'am.

11 Q. And is that consistent with what you  
12 testified yesterday you understood to be the union's  
13 position?

14 A. Yes, ma'am.

15 Q. I think he also says in the very next line  
16 that Johns-Manville did not bring this up in union  
17 negotiations in early 1975. Do you see that?

18 A. Yes, ma'am.

19 Q. Or actually, he says October 1975; is that  
20 correct?

21 A. Yes, ma'am.

22 Q. And if you flip back to page 109, the  
23 preceding page, in the middle of that first full  
24 paragraph, it's about the 12th line down, which

page 132

page 133

1 begins, "Welfare of employees."

2 A. Yes, ma'am.

3 Q. There is a line that reads, "It should  
4 also be noted that Mr. Richards admitted under  
5 cross-examination that he became aware of the  
6 no-smoking policy back in May 1975 and he also  
7 testified he nor the company ever brought this up in  
8 the negotiations that were concluded in October  
9 1975."

10 A. That's what it says here, yes, ma'am.

11 Q. So again, this outlines that the position  
12 of the union was that this was a collective  
13 bargaining issue; correct?

14 A. Yes, ma'am.

15 Q. Okay. As far as you know, the union never  
16 disputed Johns-Manville's assertions regarding the  
17 interaction between smoking and asbestos exposure,  
18 did it, in connection with this arbitration?

19 A. As far as I know.

20 Q. Did Ms. Dix show you anything that says  
21 they did?

22 A. No, ma'am.

23 Q. Did anyone else show you anything which  
24 would indicate to you that the union contested that?

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page 134

1 A. Not that I can recall.

2 Q. Okay. And the union also never disputed  
3 Johns-Manville's assertions regarding the health  
4 effects of smoking and asbestos exposure; correct?

5 A. Correct.

6 MR. MOTLEY: Excuse me. Could you  
7 clarify? When you say "the union," you're  
8 talking about the union at Denison?

9 MS. TEDDER: Yes, Mr. Motley, the union  
10 that was involved in the arbitration.

11 MR. MOTLEY: Denison.

12 MS. TEDDER: At Denison. That's correct.  
13 Which this indicates is the International  
14 Association of Machinists, Local Lodge 1609.

15 MR. MOTLEY: Thank you.

16 Q. All right. I'd ask you again --

17 MR. BERNICK: I'm not sure we got an  
18 answer to the last question.

19 MS. TEDDER: I'm sorry. Do you want to  
20 read back the last question?

21 (The record was read by the reporter.)

22 MS. TEDDER: Thank you.

23 Q. I would ask you, Dr. Kotin, to take a  
24 quick look on page 110, again, and this is the

page 134

page 135

1 middle of the first paragraph that is on that page,  
2 on page 110.

3 A. There's 120, so I'm --

4 Q. There you go. It's about the --

5 A. That's where I was.

6 Q. It's about the eighth line down, which  
7 starts, "On a doctor's opinion." Do you see that?

8 A. "On a doctor's opinion," yes, ma'am.

9 Q. The line that I'd like to refer you to  
10 says, "I can read on a cigarette package that  
11 smoking is hazardous to your health."

12 MR. MOTLEY: Excuse me, ma'am. You have  
13 attached to Exhibit B both the brief of  
14 Johns-Manville and now you're reading from the  
15 brief on behalf of the union; is that correct?

16 MS. TEDDER: That's correct.

17 MR. MOTLEY: All right.

18 MS. TEDDER: These pages are numbered, I  
19 think, Mr. Motley. That's the easiest way to  
20 refer to them is page 110.

21 MR. MOTLEY: Just wanted to clarify the  
22 record.

23 MS. TEDDER: This is the brief of the  
24 union.

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page 136

1 Q. So in effect, what the union is saying is  
2 that the union witness testified that the hazard of  
3 smoking could be read on a cigarette package; is  
4 that correct?

5 MR. MOTLEY: Object to form. The hazard?  
6 What hazard?

7 MS. TEDDER: The fact that smoking is  
8 hazardous to your health.

9 Q. That's what this says; is that correct?

10 A. Yes, ma'am.

11 Q. Okay. And did you understand this to be  
12 the position of the union when you participated in  
13 the arbitration?

14 A. I really didn't know, because there really  
15 wasn't a spokesman clearly identified for the union  
16 at the time.

17 Q. But I think you testified yesterday that  
18 you understood the position of the union was  
19 involved with taking issue over collective  
20 bargaining agreement issues; is that correct?

21 A. Yes, ma'am.

22 Q. And not with your position on asbestos

23 exposure and tobacco; correct?

24 A. Yes, ma'am.

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page 137

1 Q. All right. And you also testified at the  
2 arbitration. Did you say that yesterday?

3 A. Yes, ma'am.

4 Q. Could you basically explain the substance  
5 of your testimony, if you recall?

6 A. Yes. The basis, the rationale for the  
7 no-smoking program.

8 Q. And what did you understand to be the  
9 purpose behind your testimony?

10 A. To show that this was sound medical  
11 practice aimed at the protection of the worker.

12 Q. Do you recall testifying at that point in  
13 time that the Denison plant contained air quality  
14 control devices and other safety precautions  
15 designed to reduce asbestos levels in the air?

16 A. Yes, ma'am.

17 Q. Did you testify that under the conditions  
18 existing at the Denison plant at that time,  
19 nonsmoking asbestos workers were at no greater risk  
20 of contracting lung cancer than persons who did not  
21 work with asbestos?

22 A. Yes, ma'am.

23 Q. Would it be fair to say that your opinion  
24 at that time was that asbestos exposure at the

page 137

page 138

1 levels that were then present in the Denison plant  
2 wouldn't increase any nonsmoking asbestos workers'  
3 risk of contracting lung cancer?

4 A. Virtually none, because you're dealing  
5 with biological systems where yeses and nos always  
6 have the variability of a living system, just as the  
7 variability of each individual around this table.

8 Q. When you testified, did you also testify  
9 that a smoker exposed to asbestos in amounts  
10 comparable to those present in the Denison plant was  
11 92 times more likely to contract lung cancer than a  
12 nonsmoking --

13 A. Based on these Dr. Selikoff data, yes.

14 Q. And is it fair to say, then, that your  
15 opinion at that time was that smoking among asbestos  
16 workers in the Denison plant was the sole reason for  
17 the increased risk?

18 A. Virtually the sole reason. As I say, when  
19 you're dealing with living systems, there are no  
20 absolutes.

21 Q. Did you testify that you didn't know of  
22 any studies which refuted the conclusions found in  
23 Dr. Selikoff's 1968 study?

24 A. Yes, ma'am.

page 138

page 139

1 Q. And we've already established that those  
2 scientific assertions of yours were never challenged  
3 by the union; correct?

4 A. Correct.

5 Q. And you were, at the time the smoking ban  
6 was implemented, telling Johns-Manville's employees  
7 that if they smoked, they faced the 92 times

8 increased risk that Dr. Selikoff talked about; is  
9 that correct?

10 A. Yes, ma'am.

11 Q. And at the same time you also testified  
12 yesterday that you were urging Johns-Manville's  
13 smoking employees to quit smoking; correct?

14 A. Yes, ma'am.

15 Q. And the positions that you took in the  
16 arbitration which we've outlined here are basically  
17 the same positions you took regarding the combined  
18 health risks of smoking and asbestos exposure on  
19 other occasions while you were employed with  
20 Johns-Manville; is that correct?

21 A. Yes, ma'am.

22 Q. And you took those positions while you  
23 were testifying on Johns-Manville's behalf in  
24 litigation?

page 139

page 140

1 A. Yes, ma'am.

2 Q. And you are aware that Johns-Manville in  
3 the 1970s was involved in a number of lawsuits over  
4 asbestos-related injuries; correct?

5 A. Yes, ma'am.

6 Q. And during those lawsuits at that time,  
7 didn't Johns-Manville often blame smoking for the  
8 asbestos worker's injury?

9 A. In relation to lung cancer, yes, ma'am.

10 Q. And isn't it true that blaming smoking for  
11 the increased risk of lung cancer was part of  
12 Manville's overall strategy at the time when it was  
13 sued by workers who contracted lung cancer?

14 A. I'm having trouble with the word  
15 "strategy." It was not a strategy. It was a  
16 biological fact.

17 Q. But it was something that they stated  
18 repeatedly in those cases that you were involved in;  
19 is that correct?

20 A. They stated them, yes, ma'am.

21 Q. Okay. I'm going to ask you to refer again  
22 to page 100 in Exhibit B, which, just for purposes  
23 of clarification, I think is the arbitrator's  
24 decision.

page 140

page 141

1 A. Yes, ma'am.

2 Q. And if you look at page 100, the first  
3 full paragraph on that page, about the sixth line  
4 down --

5 A. Yes.

6 Q. -- it says, "Dr. Paul Kotin testified at  
7 length to the danger in smoking cigarettes,  
8 particularly by workers exposed to the inhalation of  
9 asbestos fibers. His conclusions relative to such  
10 hazards are not challenged by the union."

11 So the arbitrator recognized that the  
12 union didn't challenge your testimony; is that  
13 correct?

14 A. That's what it says here, yes, ma'am.

15 Q. Okay. And if you turn to page 105, which  
16 I believe is still a portion of the arbitrator's  
17 decision --

18 A. 105.

19 Q. Yes.  
20 A. Here we are.  
21 Q. The last full paragraph on that page  
22 states, "The basis of our holding is this. The new  
23 rule is unreasonable, in that it places undue strain  
24 on the nervous system of the addicted smoker." Is  
page 141

page 142

1 that correct?  
2 A. That's what it says, yes, ma'am.  
3 Q. And so despite accepting your views on the  
4 health hazards of smoking, the arbitrator still  
5 ruled that Johns-Manville's prohibition on smoking  
6 at the Denison plant constituted an unreasonable  
7 rule; is that correct?  
8 A. That's what he says. I disagree with it,  
9 but that's what it says.  
10 Q. But you are not a lawyer; is that correct?  
11 A. I'm surely not.  
12 Q. Okay. And you're not here to evaluate or  
13 tell us you're qualified to say whether or not this  
14 decision was incorrectly decided or contrary to the  
15 law; is that correct?  
16 A. I apologize for overstepping.  
17 Q. No, I'm just trying to verify.  
18 A. Yes. Correct.  
19 Q. Okay. Thank you. So it's your  
20 understanding that the arbitrator based his decision  
21 on the interpretation of the collective bargaining  
22 agreement between the union and Johns-Manville.  
23 A. Yes, ma'am.  
24 Q. Correct? All right. At the time of this

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1 arbitration, were you familiar at all with the  
2 collective bargaining agreement?  
3 A. No, ma'am.  
4 Q. At the time of the arbitration decision  
5 did you have any reason to believe -- you learned of  
6 the arbitrator's decision; is that correct?  
7 A. That's correct, yes, ma'am.  
8 Q. Did you have any reason to believe that  
9 the arbitrator made his decision based on something  
10 other than his interpretation of the collective  
11 bargaining agreement?  
12 A. I really didn't know at the time. As you  
13 said, this was beyond my ken.  
14 Q. Okay. And do you have an understanding  
15 that Johns-Manville appealed the arbitrator's  
16 decision to a higher court?  
17 A. Yes, ma'am.  
18 Q. And do you understand that it was true  
19 that Manville was ultimately unsuccessful in  
20 overturning the arbitrator's award?  
21 A. Yes, ma'am.  
22 Q. I'm going to hand you what's been marked  
23 as Exhibit C, which is reported decision of  
24 Johns-Manville Sales Corporation versus

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1 International Association of Machinists, Local Lodge  
2 1609.  
3 (Exhibit C marked.)

4 Q. 681 Fed. 2d, 756. And I'll ask you if you  
5 have ever seen that document, Dr. Kotin.

6 A. No, ma'am.

7 Q. Did Ms. Dix ever show you this in the  
8 documents that she was showing you about the smoking  
9 ban?

10 A. I never saw it.

11 Q. Okay. If you turn to what is page 5 on  
12 that document --

13 A. Yes, ma'am.

14 Q. -- I think it says that the arbitrator --  
15 the last full paragraph in the second column on that  
16 page --

17 A. Yes, ma'am.

18 Q. -- one, two, about the fourth line down,  
19 which starts, "The arbitrator found that the  
20 collective bargaining agreement" --

21 A. Yes, ma'am.

22 Q. All right. Actually, it says, "The issue  
23 is not merely whether these employees" -- I'm sorry,  
24 on the very second line in that paragraph. "The

page 144

page 145

1 issue is not merely whether these employees should  
2 stop smoking. It is whether the company should be  
3 able to discharge them if they do not, for any  
4 reason, whether lack of will power, apathy, or sheer  
5 adamancy. The arbitrator found that the collective  
6 bargaining agreement denied this right. We are not  
7 prepared to say that this decision, itself the  
8 result of a policy favoring arbitration of labor  
9 disputes, offends the national policy against  
10 smoking in asbestos plants."

11 Dr. Kotin, do you understand that he was  
12 upholding the arbitrator's decision?

13 A. Yes, ma'am.

14 Q. And that was based on the collective  
15 bargaining agreement between Johns-Manville and the  
16 union?

17 A. Yes, ma'am.

18 Q. Dr. Kotin, have you seen any evidence that  
19 anyone associated with the tobacco industry played  
20 any role in the Denison union's decision to file a  
21 grievance against Johns-Manville?

22 A. Yes.

23 Q. And what evidence is that?

24 A. This was some documents shown to me by

page 145

page 146

1 Ms. Dix.

2 Q. And what documents were those?

3 A. I don't recall the documents specifically.

4 Q. And what did those documents say?

5 A. Essentially that the tobacco industry was  
6 associated with the filing of the grievance.

7 Q. And was that contained in the documents  
8 that she showed you yesterday?

9 A. Not that I recall.

10 MS. DIX: I didn't show him any documents  
11 yesterday.

12 MS. TEDDER: I'm sorry, Mr. Motley showed  
13 you some documents yesterday that he --

14 MR. MOTLEY: Those dealt with the

15           appellate process, not the arbitration.  
16           A.    I don't recall.  No, ma'am.  I didn't see  
17   that.  
18           Q.    You didn't see the documents that  
19   Mr. Motley showed you?  
20           A.    He showed me the documents.  I don't think  
21   that was in it.  
22           Q.    Okay.  But what you are saying is Ms. Dix  
23   showed you other documents?  
24           A.    Yes, ma'am.

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1           Q.    And those documents lead you to believe  
2   that the tobacco industry played a role in the  
3   union's decision to file a grievance?  
4           A.    Yes, ma'am.  
5           Q.    What was it?  What did those documents say  
6   that led you to believe that?  
7           A.    Essentially the tobacco industry serving  
8   as a resource to the union.  
9           Q.    Dr. Kotin, do you know who those documents  
10   were from?  
11          A.    I don't recall.  
12          Q.    Do you know who those documents were to?  
13          A.    I don't recall.  
14          Q.    Do you know how many documents you saw?  
15          A.    I don't recall.  
16          MS. TEDDER:  Well, I would ask on the  
17   record, Mr. Motley and Ms. Dix, to provide us  
18   copies of the documents.  
19          MR. MOTLEY:  I will state on the record  
20   that the doctor, not being a lawyer, is  
21   confusing the decision to file a grievance with  
22   the decision and what occurred after the  
23   grievance was filed, the arbitration was  
24   rendered, a decision was rendered, and then the

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1           appellate process set in.  
2           The documents that I showed Dr. Kotin  
3   dealt with post arbitration Tobacco Institute  
4   surreptitiously writing the briefs for  
5   Mr. Crowder, who represented the union.  
6           MS. TEDDER:  I object to your  
7   characterization.  
8           MR. MOTLEY:  Well, you asked me to state  
9   on the record, so I did.  
10          (A discussion was held off the record.)  
11          MR. BYASSEE:  Wait a minute.  Wait a  
12   minute.  We're going to have two people  
13   talking, and that's it.  Nobody else talks  
14   except these two.  
15          MR. BERNICK:  We can also excuse the  
16   witness.  I'm trying to cut through to get a  
17   stipulation in this case --  
18          MR. BYASSEE:  We'll excuse the witness,  
19   but we're not going to -- in this room with  
20   Dr. Kotin here, we're going to have two people  
21   talking.  
22          MS. TEDDER:  That's fine.  
23          Q.    Dr. Kotin, do you think it's possible that  
24   Mr. Motley's correct and that you didn't see any

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1 evidence that the tobacco industry had any role in  
2 the decision to file a grievance?

3 A. Restate the question, please.

4 Q. Is Mr. Motley correct when he says he did  
5 not show you any documents which would indicate that  
6 the tobacco industry had anything to do with the  
7 union's decision to file a grievance against  
8 Johns-Manville?

9 A. Yes, ma'am.

10 Q. All right. So you haven't, in fact, seen  
11 any evidence that the tobacco industry played any  
12 role in the Denison, Texas, union's decision to file  
13 a grievance against Johns-Manville; correct?

14 A. I'd have to see the documents again.

15 Q. Well, I'm sorry, go ahead.

16 A. What I learned from the documents shown  
17 me -- I use the word "association" advisedly,  
18 because the substantive association between the  
19 tobacco industry and the issue of smoking and  
20 health -- yes, I saw documents to that effect.

21 Q. But that's not my question, Dr. Kotin. My  
22 question deals with the grievance. You understand  
23 from the collective bargaining process that a union  
24 files a grievance; correct?

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1 A. Correct.

2 Q. And that grievance leads ultimately to an  
3 arbitration in front of an arbitrator? Do you  
4 understand that; correct?

5 A. Yes, ma'am.

6 Q. And you understand that that's what  
7 happened in this case?

8 A. Yes, ma'am.

9 Q. All right. And what I'm talking about is  
10 the very first step, the filing of the grievance.  
11 Mr. Motley says he didn't show you any documents  
12 that connected the tobacco industry with that;  
13 correct?

14 A. That's what Mr. Motley said, yes.

15 Q. And you dispute Mr. Motley's statement?

16 A. Not at all.

17 Q. So you, in fact, haven't seen any evidence  
18 that anyone with the tobacco industry played any  
19 role in the Denison union's decision to file a  
20 grievance against Johns-Manville?

21 A. Before I answer that, I would have to see  
22 the documents and recall their content that Ms. Dix  
23 showed me, because the hierarchical arrangement or  
24 the sequence that you so clearly outlined was

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1 something I wasn't sophisticated enough to put in  
2 the hierarchical way, a grievance, appeal, et  
3 cetera, et cetera.

4 Q. All right. Well, we can probably clarify  
5 that with a stipulation from Mr. Motley.

6 All right. No one from the tobacco  
7 industry testified at the arbitration hearing; is  
8 that correct?

9 A. Not that I'm aware of.

10 Q. You don't have any personal knowledge of

11 that; right?  
12 A. No, ma'am.  
13 Q. No one from the tobacco industry was  
14 present at the arbitration proceeding; correct?  
15 A. Not that I'm aware of.  
16 Q. You haven't seen any evidence that would  
17 lead you to believe that someone with the Tobacco  
18 Institution participated in the drafting of the  
19 union's brief, which was Exhibit B which I showed  
20 you earlier; correct?  
21 A. I don't know. Yes, ma'am.  
22 Q. You don't have any personal knowledge that  
23 that happened; correct?  
24 A. That's correct.

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1 Q. You don't have any reason to believe that  
2 anyone with the tobacco industry had any contact in  
3 any form with the union before the ordering  
4 arbitration; correct?  
5 A. Correct. I have no knowledge of that.  
6 Q. To the best of your knowledge, the union  
7 was solely responsible for its decision to file a  
8 grievance and arbitrate?  
9 A. To the best of my knowledge.  
10 Q. Okay. So to the best of your knowledge,  
11 when the arbitrator made his decision in December,  
12 on December 6, 1976, he hadn't received any briefs  
13 or any input from anyone at the tobacco industry or  
14 in connection --  
15 A. To the best of my knowledge.  
16 Q. Thank you. I want to talk for just a  
17 minute about a document that you were shown  
18 yesterday. Do you have the exhibits that were  
19 marked yesterday? Could I look at number 4? If you  
20 need to take a break, let me know.  
21 A. All right. I will let you know.  
22 Q. Dr. Kotin, yesterday Mr. Motley showed you  
23 what has been marked as Kotin Exhibit 4. Just for  
24 purposes of the record, it is a March 30, 1977, memo

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1 from Alexander Holtzman; is that correct?  
2 A. Yes, ma'am.  
3 Q. Do you recall seeing this document  
4 yesterday?  
5 A. Yes, ma'am.  
6 Q. This document is dated March of 1977;  
7 correct?  
8 A. Yes, ma'am.  
9 Q. And based upon what I have shown you  
10 earlier today, in Exhibit B, you understand that the  
11 arbitrator's decision was in December 1976; correct?  
12 A. I believe so, yes, ma'am.  
13 Q. If you would like to look at Exhibit B,  
14 you're certainly welcome to.  
15 A. May I?  
16 Q. Sure. It's about page 105 or so. That's  
17 my best guess.  
18 A. Yes, ma'am. December 6, 1976.  
19 Q. All right. So the letter that is Kotin  
20 Exhibit 4 is dated after the union won the  
21 arbitration; is that correct?

22 A. Yes, ma'am.  
23 Q. Okay. And I think you indicated yesterday  
24 that after Johns-Manville ultimately lost this case,  
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1 it began including the union through the collective  
2 bargaining process before initiating smoking in its  
3 plants?

4 A. I wasn't involved, but that was my  
5 understanding.

6 Q. Okay. And once Johns-Manville began  
7 including the unions, isn't it true that the unions  
8 stopped challenging the smoking bans?

9 A. I know the unions stopped challenging the  
10 smoking ban. The chronology I'm not sure of.

11 Q. Do you want to take a break or --

12 A. Is this a good --

13 Q. It's fine for me, if it's fine for you.

14 A. Sure is. Thank you.

15 (A recess was taken.)

16 Q. Dr. Kotin, I know that we've talked a  
17 little bit earlier and you talked yesterday about  
18 the smoking-ban issue and what you believe is  
19 involved about the tobacco industry, and I think  
20 there may have been a little bit of confusion on  
21 that issue, and I think we can straighten that out  
22 with just a couple of questions.

23 You do understand that Manville instituted  
24 a smoking ban based upon your medical advice as to  
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1 the health effects that you believed existed between  
2 smoking and asbestos exposure?

3 A. Yes, ma'am.

4 Q. All right. You understand that the union  
5 on its own filed a grievance over that institution  
6 of the smoking ban; is that correct?

7 A. The union filed a grievance, yes, ma'am.

8 Q. And the union's issue was not the health  
9 effects of smoking and asbestos exposure, but the  
10 collective bargaining agreement; correct?

11 A. Yes, ma'am.

12 Q. The union did not contest the medicine;  
13 correct?

14 A. Correct.

15 Q. There was an arbitration of that  
16 grievance; correct?

17 A. Yes, ma'am.

18 Q. And the arbitration -- the arbitrator  
19 didn't contest the medical evidence; correct?

20 A. Correct.

21 Q. The arbitrator made a decision based on  
22 the collective bargaining agreement; correct?

23 A. Yes, ma'am.

24 Q. Okay. The union prevailed based on the  
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1 collective bargaining agreement; correct?

2 A. In Denison, Texas, yes, ma'am.

3 Q. Yes. And Johns-Manville appealed the  
4 decision of the arbitrator from Denison; correct?

5 A. Correct.

6 Q. All right. At that point in time, the

7 document that Mr. Motley showed you yesterday  
8 indicated potential involvement by the tobacco  
9 industry; is that correct?  
10 A. Yes, ma'am.  
11 Q. All right. Do you understand that the  
12 tobacco industry never contested the science; is  
13 that correct?  
14 MR. MOTLEY: Object to the form of that  
15 question.  
16 You can answer, Doctor. If you don't  
17 know, you don't know.  
18 A. It's going to take some thinking to answer  
19 that.  
20 Q. Sure.  
21 A. Because there were so many venues in which  
22 the tobacco industry occupied itself that in many of  
23 the -- in most of the venues, they did contest it.  
24 Are you referring specifically to this?

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1 Q. I'm referring to -- yes.  
2 A. Yes, ma'am.  
3 Q. The appeal of the arbitration.  
4 A. Yes, ma'am.  
5 Q. They didn't contest the science?  
6 A. Yes, ma'am.  
7 Q. And you don't have any indication that the  
8 tobacco industry ever told the union to contest the  
9 science; is that correct?  
10 A. I don't know that.  
11 Q. You don't have any knowledge that would  
12 indicate that?  
13 A. Yes, that's correct.  
14 Q. And the sole issue, as far as you  
15 understand it, was the collective bargaining  
16 agreement; is that correct?  
17 A. Yes, ma'am.  
18 Q. You recognize, Dr. Kotin -- I know you  
19 said you don't know a lot about the collective  
20 bargaining process, but you do recognize that  
21 workers' rights are important; is that correct?  
22 A. As an ex-member of a union, yes.  
23 Q. And that dealing with workers' rights is  
24 an important part of what a company does in

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1 negotiating with its workers? Do you understand  
2 that that's important?  
3 A. I have an opinion as a citizen, yes. Not  
4 an expert.  
5 Q. No, I'm not asking for an expert opinion,  
6 but you understand that dealing with workers' rights  
7 is important for any corporation; correct?  
8 A. Yes, ma'am.  
9 Q. Okay. I think I may have put that issue  
10 to bed. So I'll move on.  
11 When you came to Manville, in 1974, you  
12 believed that cigarette smoking caused disease in  
13 asbestos workers; is that correct?  
14 A. Yes, ma'am.  
15 Q. And you told other people within JM  
16 management of your view; is that correct?  
17 A. Yes, ma'am.

18 Q. And I think we've already talked about  
19 your job as medical director for Johns-Manville you  
20 have said included the responsibility to protect  
21 workers' health; correct?

22 A. Yes, ma'am.

23 Q. And you were under an obligation not to  
24 understate or overstate the risks of working with

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1 asbestos; is that correct?

2 A. Correct.

3 Q. And you wanted to represent the true state  
4 of the scientific knowledge; is that correct?

5 A. Yes, ma'am.

6 Q. You wanted to warn workers of risks if you  
7 thought that was appropriate; is that correct?

8 A. Yes, ma'am.

9 Q. And if you needed -- if you determined  
10 that Johns-Manville needed to take some action to  
11 protect a worker's health, you were going to make  
12 that recommendation, weren't you?

13 A. Yes, ma'am.

14 Q. And if you made that recommendation,  
15 Johns-Manville was going to act upon your  
16 recommendation; is that correct?

17 A. Yes, ma'am.

18 Q. If you believed that research needed to be  
19 done to support those recommendations, you would  
20 have made that recommendation to Johns-Manville;  
21 correct?

22 A. Recommendations in relation to what?  
23 Asbestos and health?

24 Q. Sure, asbestos and health or other worker

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1 health issues.

2 A. Yes, ma'am.

3 Q. And you had the power to see, if that  
4 needed to be done, that it was done; is that  
5 correct?

6 A. Yes, ma'am.

7 Q. Dr. Selikoff wrote in 1964 that workers  
8 exposed to asbestos faced an increased risk of  
9 disease. Workers exposed to asbestos faced an  
10 increased risk of disease; correct?

11 A. Yes, ma'am.

12 Q. In 1964. And you have previously  
13 testified that any company doctor who heard the oral  
14 presentation by Dr. Selikoff in 1963 at the American  
15 Medical Association convention in Atlantic City, New  
16 Jersey, on June 17, 1963, should have been prompted  
17 to investigate labeling insulation products with a  
18 warning about asbestos exposure; correct?

19 A. Yes, ma'am.

20 Q. After Dr. Selikoff's report in 1964,  
21 Johns-Manville responds promptly and adds a warning  
22 label to its product; is that correct?

23 A. Yes, ma'am.

24 Q. And that warning label was a very broad

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1 warning; is that correct?

2 A. I think I know what you mean by "broad."

3 Yes.  
4 Q. Okay. Well, we can just take a look, if  
5 you want to.  
6 A. No, I'm fine.  
7 Q. Okay. I just might refer to Plaintiff's  
8 Exhibit -- I think Mr. Motley actually talked about  
9 the warning. Broad in the sense that it was  
10 directed to -- it was a label that was put on the  
11 product; correct?  
12 A. Yes, ma'am.  
13 Q. So the warning went to anyone who  
14 ultimately received the product with that label on  
15 it; correct?  
16 A. Yes, ma'am.  
17 Q. Much broader than just the Manville work  
18 force; is that correct?  
19 A. Yes, ma'am.  
20 Q. All right. That's what I mean by the  
21 sense of broad warning. Dr. Selikoff's findings  
22 about synergy between asbestos and tobacco were  
23 first presented in 1967 and published in 1968; is  
24 that correct?

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1 A. Yes, ma'am.  
2 Q. And following Dr. Selikoff's publication  
3 in 1968, do you have an understanding that some  
4 people tried to -- some scientists tried to  
5 replicate his findings?  
6 A. Yes.  
7 MR. MOTLEY: Excuse me, are you now going  
8 to vouch for him as an expert?  
9 MS. TEDDER: No.  
10 MR. MOTLEY: Okay.  
11 Q. You, Dr. Kotin, recommended that  
12 Johns-Manville modify the label, the warning label,  
13 on its package in 1977; is that correct?  
14 A. Yes, ma'am.  
15 Q. And I'm looking at Kotin Exhibit 7, which  
16 I believe is a document that Mr. Motley showed you  
17 yesterday. Do you recall seeing that exhibit?  
18 A. Yes, ma'am.  
19 Q. All right. And I think in about the  
20 middle of the page, there is a line which  
21 contains -- what this states is a recommended  
22 modification to the warning that Johns-Manville had  
23 on its product, and that modified warning indicates  
24 that smoking will increase the risk of serious

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1 bodily harm; is that correct?  
2 A. Yes, ma'am.  
3 Q. And as I understand this, that was to be  
4 added to the existing warning?  
5 A. Yes, ma'am.  
6 Q. All right. This warning that you  
7 recommended adding did not -- doesn't mention  
8 synergy, does it?  
9 A. No, it does not.  
10 Q. This warning doesn't tell people not to  
11 smoke, does it?  
12 A. Certainly what would be the purpose of a  
13 warning if it were not to warn you against the

14 hazard associated with the exposure, whatever it  
15 might be?  
16 Q. Well, it doesn't tell people not to smoke,  
17 does it? It doesn't say, "Don't smoke"?  
18 A. No, it does not say that.  
19 Q. Okay. You stated yesterday that you were  
20 warning -- you told Johns-Manville's employees not  
21 to smoke; is that correct?  
22 A. Correct.  
23 Q. You told them that. "Don't smoke."  
24 A. That's correct.

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1 Q. You said you were meeting once a month  
2 with Dr. Selikoff; is that correct?  
3 A. At least, yes, ma'am.  
4 Q. And you were very familiar with  
5 Dr. Selikoff's message that asbestos workers  
6 shouldn't smoke?  
7 A. Yes, ma'am.  
8 Q. And his finding that an asbestos worker  
9 who smoked had a 92 times increased risk of lung  
10 cancer. You were familiar with that; correct?  
11 A. Yes, ma'am.  
12 Q. And that's something else that you told  
13 your employees; is that correct?  
14 A. Yes, ma'am.  
15 Q. Okay. And that message, I think you said  
16 yesterday, you took from plant to plant?  
17 A. Yes, ma'am.  
18 Q. And you did that to all of  
19 Johns-Manville's plants?  
20 A. Where asbestos exposure occurred.  
21 Q. All of the Johns-Manville plants across  
22 the United States?  
23 A. Yes, ma'am.  
24 Q. And you did that when you were trying to

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1 implement the smoking ban; correct?  
2 A. Yes, ma'am, part of the process.  
3 Q. And you were trying to bring  
4 Dr. Selikoff's message home to the Manville asbestos  
5 workers; correct?  
6 A. Yes, ma'am.  
7 Q. And I think you said yesterday that you  
8 did that by talking to them, is one way; correct?  
9 A. Yes, ma'am.  
10 Q. And you also did that by, I think, at that  
11 time making slide show presentations?  
12 A. Visual aids, yes, ma'am.  
13 Q. And I think Mr. Motley showed -- talked to  
14 you yesterday a little bit about Exhibit Number 3,  
15 which was the no-smoking-ban policy?  
16 A. Yes, ma'am.  
17 Q. Do you recall that?  
18 A. Yes, ma'am.  
19 Q. And that had attached to it little  
20 excerpts of some of the information that you were  
21 presenting to the employees; is that correct?  
22 A. Yes, ma'am.  
23 Q. And you counseled the Johns-Manville  
24 employees and told them to stop smoking; correct?

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1 A. Yes, ma'am.

2 Q. Can you tell me why you didn't recommend a  
3 change to the warning label for Johns-Manville's  
4 products until 1977?

5 A. Because, again, I was -- it was just the  
6 amount of time that was required to prepare the  
7 program, justify it, explain it, take -- anticipate  
8 the challenges that might come, and in general, it  
9 was the sequence of time that elapsed. But  
10 certainly the discussions about the no-smoking ban  
11 before its formalization were discussed throughout  
12 the company well in advance of that.

13 Q. When did those discussions begin?

14 A. Shortly after I came. I won't remember  
15 when. 1975.

16 Q. Those were the discussions about the  
17 smoking ban?

18 A. Yes, ma'am, about the entire issue of  
19 smoking and health and workers exposed to asbestos.

20 Q. Well, my question is a little bit  
21 different. As I understood Kotin Exhibit 1, it's a  
22 modification to the written warning label on the  
23 package; is that correct?

24 A. It's in addition to it, yes, ma'am.

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1 Q. Yes. The suggested language, "Smoking  
2 will increase the risk of bodily harm," is a change;  
3 correct?

4 A. It's an addition, a change, yes.

5 Q. And you said yesterday, you testified  
6 yesterday that you put that -- you recommended that  
7 warning be added because this package label went out  
8 to people beyond the work force of Johns-Manville;  
9 correct?

10 A. Correct.

11 Q. So my question to you is: Why did you not  
12 implement this warning, smoking will increase the  
13 risk of serious bodily harm, for the general public  
14 until 1977?

15 A. It was the time involved and making sure  
16 that it would be fully understood. It represented  
17 departure from the walls of Manville facilities, so  
18 that you were dealing with a whole spectrum of  
19 different corporations, different workers who had no  
20 corporate responsibility or employee responsibility  
21 to handle -- all those were time-consuming. There  
22 was no delay other than that which was absolutely  
23 necessary.

24 Q. Can you tell me when the discussions about

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1 this issue started, the issue of modifying the  
2 warning label?

3 A. Sometime after I came. I won't remember  
4 when.

5 Q. Okay. After 1974?

6 A. Yes, ma'am.

7 Q. Okay. Dr. Selikoff's -- do you know that  
8 Dr. -- strike that.

9 Dr. Selikoff's study wasn't successfully



10 replicated until he did so in 1979; is that correct?  
11 MR. MOTLEY: Objection to form. That's  
12 not correct. Are you going to make him into an  
13 expert, state of the art? I'll stipulate he's  
14 one, and we'll go into the documents one by  
15 one. You made a representation that's totally  
16 inaccurate.  
17 MS. TEDDER: Well, if the doctor believes  
18 my representation is inaccurate, he can correct  
19 it.  
20 A. Will you ask the question again, please?  
21 Q. I said, Dr. Selikoff's findings weren't  
22 successfully replicated until he did so in 1979.  
23 A. No. That is wrong.  
24 Q. Okay. Can you tell me what is wrong about

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1 that?  
2 A. The fact that three British studies -- one  
3 by Molly Newhouse, Dr. Newhouse; one by  
4 Dr. Lewinsohn, in England; one by Dr. Sluis-Cremer  
5 in South Africa, and an in-house unpublished study  
6 by the epidemiology branch of the National Cancer  
7 Institute.  
8 Q. And all of those studies successfully  
9 duplicated what he did; replicated his efforts?  
10 A. Confirmed his conclusions.  
11 Q. And are those -- those studies are not  
12 synergy studies, are they?  
13 A. Every study, as a result of its  
14 conclusion -- whether the intention was to  
15 demonstrate synergy or not, the conclusions were  
16 that there was a synergistic effect.  
17 Q. But those studies weren't designed to  
18 determine synergy; isn't that correct?  
19 A. No. You're asking -- it's a nonquestion  
20 you're asking, because basically, the studies were  
21 designed to demonstrate the association, if any,  
22 between smoking and asbestos exposure. The results  
23 of the study are the determinants of what the study  
24 has accomplished.

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1 When you initiate a study, you ask a  
2 question. You have a series of answers, some of  
3 which are anticipated, some of which are  
4 disappointing, and some of which were wholly  
5 unanticipated. And this is the situation with this.  
6 There is no study that I'm aware of that  
7 does not show the synergistic association -- well,  
8 no valid study that does not show the synergistic  
9 association between cigarette smoking and exposure  
10 to asbestos.  
11 Q. So the result that you're saying that  
12 these people found was not an anticipated result?  
13 MR. MOTLEY: Objection. That's not what  
14 he said.  
15 A. No, that's not -- not at all. What I'm  
16 saying is this: That when you do an experiment -- I  
17 don't want to repeat myself -- basically, you don't  
18 know what the outcome is going to be. That's why  
19 you're doing the study. And all I'm saying is: The  
20 studies all showed this synergistic relationship.

21 Q. All right. Can you tell me if Manville  
22 did any synergy research before Dr. Selikoff in  
23 1968?

24 A. None that I'm aware of.

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1 Q. Was this an issue for Johns-Manville  
2 before 1968?

3 A. I don't know. I wasn't there.

4 Q. Based on what you know, based on your  
5 tenure at Johns-Manville, do you know whether or not  
6 it was an issue --

7 A. I don't know.

8 Q. -- in 1968? Do you have any reason to  
9 believe that it was?

10 A. I don't know.

11 Q. Did Johns-Manville do any synergy research  
12 after Dr. Selikoff in 1968 that you know of?

13 A. Johns-Manville did the research associated  
14 with studying the risk for cancer, and an inevitable  
15 component -- an intrinsic component is a better  
16 word -- of that was synergistic relationships.

17 Q. My question -- and maybe I just didn't  
18 understand your answer -- was: Did they do  
19 specifically any synergy research after  
20 Dr. Selikoff -- I understand -- I'm sorry, I  
21 understand that you indicated they worked with  
22 Dr. Selikoff.

23 A. All I can answer, I think, specifically is  
24 that Johns-Manville research verified the

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1 synergistic relationship.

2 Q. And what Johns-Manville research verified  
3 the synergistic relationship?

4 A. The epidemiologic studies, the clinical  
5 studies, the follow-up studies, the risk studies,  
6 the basic -- I guess you call it basic fundamental  
7 biology. Were the observations made with people  
8 compatible with the principles of biology? And the  
9 answer was: Entirely.

10 Q. And is that research that you're talking  
11 about the research that they did in connection with  
12 Dr. Selikoff?

13 A. Research was done in relation to many  
14 institutions. Vanderbilt University, University of  
15 California, Mount Sinai, McGill University in  
16 Montreal. University of Toronto in Canada. Guys  
17 Hospital and the University of London Schools of  
18 Medicine and the Respiratory Disease Institute, yes,  
19 ma'am.

20 Q. Can you tell me the names of any articles  
21 that Johns-Manville did with respect to synergy post  
22 Dr. Selikoff? Were there any publications that  
23 resulted?

24 A. Where their support was acknowledged?

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1 Yes, ma'am, including Dr. Selikoff.

2 Q. Other than Dr. Selikoff, can you --

3 A. Yes, I think Dr. Corbett McDonald at  
4 McGill University acknowledged the support.

5 Q. And can you tell me what article

6 Dr. Corbett McDonald --  
7 A. He's written --  
8 Q. -- wrote?  
9 A. He's written dozens of articles. I can't  
10 give you the titles right now, but he was a highly  
11 prolific, highly productive researcher in the field  
12 of asbestos and health.  
13 Q. Well, my question is not asbestos and  
14 health. My question is specifically limited to  
15 alleged interaction between asbestos and tobacco.  
16 A. I use the same names again. Yes.  
17 Dr. McDonald.  
18 Q. He wrote articles concerning --  
19 A. Many.  
20 Q. And that was post Dr. Selikoff in 1968?  
21 A. Actually, I'd have to go back and look at  
22 that, because I know that Dr. McDonald and  
23 Dr. Selikoff were in communication as early as 1964,  
24 and in fact, at the New York Academy of Sciences

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1 meeting in 1964, many of the names that I mentioned  
2 were there, and they communicated. Papers were  
3 presented. The actual publications, I can't give  
4 you the dates.  
5 Q. So you can't -- you don't know at the  
6 present time whether that's before or after  
7 Dr. Selikoff's 1968 report?  
8 A. It's entirely possible it was before and  
9 after. I don't know.  
10 Q. You can't tell me at the present time?  
11 A. No.  
12 Q. Other than Dr. Corbett McDonald --  
13 MR. MOTLEY: Excuse me, ma'am. He listed  
14 seven or eight, and now you're focusing on  
15 Corbett McDonald. I object to the form of the  
16 question.  
17 MS. TEDDER: No, I said other than  
18 Dr. Corbett McDonald.  
19 MR. MOTLEY: He already gave you seven or  
20 eight names.  
21 MR. BERNICK: Let's go off the record.  
22 MR. BYASSEE: Wait a minute. Let's stay  
23 on the record for a second. We have agreed  
24 that two people will talk. On the record --

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1 now, two people will talk in this room with Dr.  
2 Kotin. And if you say one more word, you're  
3 out of the room, or this deposition is over.  
4 Do you understand that?  
5 MR. BERNICK: You can call the magistrate  
6 judge. We're going to --  
7 MR. BYASSEE: We're going to do it right  
8 now.  
9 MR. BERNICK: We'll excuse the witness.  
10 MR. BYASSEE: Let's go off. Let's do it  
11 right now, because you say one more word and  
12 you're out of here.  
13 MR. BERNICK: You don't make up the rules.  
14 We're going to go off the record and I'm going  
15 to have a discussion with counsel.  
16 MR. BYASSEE: Then have it with counsel,

17 but not on the record with my client here.  
18 MR. BERNICK: That's fine.  
19 MR. BYASSEE: So I don't want to hear it  
20 again.  
21 MR. BERNICK: That's fine. You can leave.  
22 MR. BYASSEE: Just understand.  
23 MR. BERNICK: Yes.  
24 MR. BYASSEE: Now, why are we off the

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1 record?  
2 THE REPORTER: Are we off the record?  
3 MR. BYASSEE: We're on the record, then.  
4 Why are we going off the record? Dr. Kotin is  
5 not -- doesn't need a break at this point.  
6 MR. BERNICK: We're going off the record  
7 because I want to raise an objection. I don't  
8 want to violate the rules that you are very  
9 insistent upon, and therefore I'm prepared to  
10 excuse Dr. Kotin. You can be here or you don't  
11 have to be here if you don't want to, but I'm  
12 going to raise an objection to how the  
13 deposition is being conducted. I'm going to do  
14 that. I could do it -- you don't have to be  
15 here if you don't want to, but that's what I'm  
16 going to do.  
17 MR. MOTLEY: Let the record reflect Mr.  
18 Bernick was not even here yesterday.  
19 MR. BYASSEE: Yes, why don't we get an  
20 appearance from this gentleman?  
21 MR. MOTLEY: David Bernick representing  
22 Brown & Williamson, B-E-R-N-I-C-K, with  
23 Kirkland & Ellis, in Chicago.  
24 MR. BYASSEE: Okay. Well, I'm going to --

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1 at this point I'm going to try to get hold of  
2 the magistrate, because we made the rules.  
3 MR. BERNICK: You're free to do it.  
4 MR. BYASSEE: We made these rules and we  
5 can get this done without this kind of thing  
6 going on. But if we're going to insist on  
7 somebody else jumping into the middle of it,  
8 then we're going to stop it and get hold of the  
9 magistrate, if I'm forced to do that.  
10 MR. BERNICK: I'll call the magistrate if  
11 you want.  
12 MR. BYASSEE: Then let's go do it right  
13 now. Let's get it done.  
14 (A discussion was held off the record.)  
15 MR. BERNICK: I'd like to go back to the  
16 question that was -- two questions that were  
17 put. I want -- actually, if you just look for  
18 Mr. Motley's remarks, I want to pick up those  
19 remarks and raise them with the magistrate.  
20 MR. MOTLEY: You want to pick up the  
21 remarks of your colleague yesterday, sir, with  
22 the objections that violate the Court's order  
23 about objecting only to form? We'll be glad to  
24 read the whole deposition. You weren't here.

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1 You didn't see what happened.

2 And I'm going to object to the form of a  
3 question where she tries to insinuate that this  
4 gentleman said there was only one other person  
5 who was doing the work.

6 And if you want to raise it with the  
7 magistrate, I'm perfectly happy. We got  
8 yesterday's transcript, with the voluminous  
9 speaking objections. We'll raise it as  
10 thoroughly as you want.

11 This, in my view, is nothing more than an  
12 effort to inconvenience an 84-year-old man  
13 who's obviously infirm. And you weren't here  
14 yesterday. We took numerous breaks and we  
15 actually got along fine until you got here.

16 MR. BERNICK: If we could get those  
17 particular remarks by Mr. Motley, I'm going to  
18 raise them with the magistrate. This is up to  
19 you. I don't think that your objections are  
20 appropriate.

21 MR. MOTLEY: You should have been here  
22 yesterday. Let's take it up. Let's take up  
23 the whole thing.

24 MR. BERNICK: Let's take it up.

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1 MR. MOTLEY: Take the whole thing up. He  
2 never objected yesterday to anything that went  
3 on. He objects today, when you finally show up  
4 at the eleventh-and-a-half hour and make your  
5 utterances when you're totally ignorant of what  
6 happened yesterday.

7 So we'll raise that with the magistrate  
8 until the cows come home. But you are, again,  
9 disrupting this deposition, inconveniencing  
10 this gentleman, and causing him this --

11 MR. BERNICK: Does it make you feel good?  
12 There's no magistrate on the phone. I want to  
13 get the parts of the record excerpted so we can  
14 raise them if we have to raise them. I want  
15 the deposition to continue and I want to  
16 continue without your coaching objections.  
17 They're inappropriate.

18 I think the witness is very, very capable,  
19 and he's doing just fine. He doesn't need your  
20 help. That's the purpose of my objection. I'm  
21 not interested in interrupting the process. I  
22 want to continue it.

23 MR. MOTLEY: You want to do nothing more  
24 than delay.

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1 (A discussion was held off the record.)

2 MR. MOTLEY: We, the plaintiff has made --

3 MR. BERNICK: There's nobody going to be  
4 here.

5  
6 MR. MOTLEY: That's too bad. Walk out. I  
7 don't care if you walk out.

8 (Defendants' counsel left the room.)

9 MR. MOTLEY: I made the suggestion that we  
10 accommodate the witness, who's 84 years old,  
11 and obviously infirm, by letting Mr. Bernick  
12 make his objection outside the presence of the

13 doctor, and then proceed.  
14 Mr. Bernick says he doesn't want to do  
15 that. He wants to raise one objection he's  
16 heard when he wasn't here the first day, didn't  
17 see how the objections were made by his  
18 colleague.  
19 And so my offer stands. So I guess  
20 they'll go get the magistrate on the phone and  
21 inconvenience an 84-year-old man. And that's  
22 all I have to say.  
23 (A recess was taken.)  
24 Q. (By Ms. Tedder) Dr. Kotin, you and I were

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1 talking about some research just before the break  
2 that you said Johns-Manville sponsored; is that  
3 correct?  
4 A. I said it was associated with.  
5 Q. Okay. And when you say "associated with,"  
6 what does that mean?  
7 A. Provided the resources, made medical  
8 records, made population records available, and  
9 expertise.  
10 Q. Was any of this internal research at  
11 Johns-Manville?  
12 A. I don't know how you define "internal  
13 research." It had to be partly internal because the  
14 assembling of all the material that was used in  
15 research, whether inside or outside, was internal.  
16 Q. What I mean by internal research is  
17 research that was done internally at Johns-Manville  
18 without any assistance of any outside entity or  
19 through any outside entity.  
20 A. Yes, ma'am.  
21 Q. And I'm asking in total. Not parts of it.  
22 I understand you said parts of it were internal.  
23 A. You're trying to separate something that  
24 is inseparable. Manville's records are part of the

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1 research that anybody does that is involved with  
2 this issue using the Manville population, using  
3 Johns-Manville as a resource, in the overall sense.  
4 Q. So let me ask the question this way.  
5 Excluding the Manville population, was there any  
6 internal Manville research on synergy post  
7 Dr. Selikoff in 1968?  
8 A. Every time we examined a worker, every  
9 time we did a survey, anytime the outside experts  
10 who had responsibility for the plant did any work at  
11 all, that was intrinsic to the study of many things,  
12 including synergy.  
13 Q. Was any internal research published,  
14 strictly internal?  
15 A. Published where?  
16 Q. Anywhere. You tell me.  
17 A. Oh, there were in-house documents, of  
18 course, all the time.  
19 Q. Published externally in scientific  
20 publications?  
21 A. No, but with acknowledgment by the authors  
22 of the Johns-Manville contribution. That is  
23 universal.

24 Q. My question assumes -- is there any

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1 research done internally by Johns-Manville's own  
2 research division --

3 A. Yes, ma'am.

4 Q. Not funded or -- not utilizing any outside  
5 entity?

6 A. Yes, ma'am. A lot. Most of which I  
7 was --

8 Q. Let me finish my question, Dr. Kotin.  
9 That was published. Published by -- by "published,"  
10 I mean published in scientific journals.

11 A. Yes, by me.

12 Q. And what was that?

13 A. Presentations before the National Bureau  
14 of Standards, presentations before the New York  
15 Academy of Sciences, published, peculiarly enough,  
16 in the south -- the Alabama Medical Association  
17 monthly journal. Published in -- well --

18 Q. Okay. Can you tell me how that research  
19 was funded?

20 A. It was intrinsic to the operation of the  
21 health, safety, and environment program.

22 Q. Did you use an outside entity? Was it  
23 contract research, or do you know?

24 A. I do know, for certain, things we

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1 contracted. For instance, if we wanted to do x-ray  
2 crystallography, we contracted with Colorado State  
3 University in Fort Collins to provide us that  
4 resource.

5 Q. All right. And if you contracted with  
6 another entity, was credit generally given to  
7 Johns-Manville?

8 A. Yes, ma'am.

9 Q. All right. Dr. Kotin, over the years  
10 during your career with Johns-Manville, you had the  
11 opportunity to make presentations to Congress over  
12 time; is that correct?

13 A. Yes, ma'am.

14 Q. And I think you testified a number of  
15 times; correct?

16 A. Yes, ma'am.

17 Q. And you always testified truthfully?

18 A. Yes, ma'am.

19 Q. You never went to Congress and advised  
20 them that the warning label on a cigarette package  
21 was inadequate, did you?

22 A. No, ma'am.

23 Q. And you understood, Dr. Kotin, that the  
24 warning on cigarette packages was given in

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1 conformity with the mandate by Congress; is that  
2 correct?

3 A. Yes, ma'am.

4 Q. And in none of your speeches to Congress  
5 did you recommend that they implement a synergy  
6 warning; is that correct?

7 A. Yes, ma'am.

8 Q. You didn't?

9 A. I did not. No. I'm agreeing with you.  
10 Yes, ma'am.  
11 Q. I'm going to hand you, Dr. Kotin, what's  
12 been marked for identification as Exhibit D.  
13 (Exhibit D marked.)  
14 Q. And that is a letter to you dated April 8,  
15 1954, and it's signed -- the name at the bottom of  
16 page 3 is C. Parker McComas. Do you recognize that  
17 letter?  
18 A. It was a long time ago, but I remember it,  
19 yes, ma'am.  
20 Q. And is this the letter wherein you're  
21 invited to join the Tobacco Industry Research  
22 Committee?  
23 A. Yes, ma'am.  
24 Q. And is this the letter inviting you to

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1 join the SAB, which we have talked about previously?  
2 A. Yes, ma'am.  
3 Q. And you remember receiving that letter?  
4 A. I don't remember receiving it, but I  
5 obviously did.  
6 Q. Don't have any reason to believe you  
7 didn't?  
8 A. That's correct.  
9 Q. Okay. I'm going to hand you what's been  
10 marked as Exhibit E.  
11 (Exhibit E marked.)  
12 Q. This is an April 12th, 1954, letter from  
13 you to Parker McComas. Do you recognize that  
14 document?  
15 A. Yes, ma'am.  
16 Q. And does that contain your signature?  
17 A. It does. Yes, ma'am.  
18 Q. And that letter states your intent to join  
19 the SAB; is that correct?  
20 A. Yes, ma'am.  
21 Q. And you state in this letter that  
22 scientists who had accepted positions of the SAB  
23 were of the highest repute and accomplishment; isn't  
24 that correct?

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1 A. Yes, ma'am.  
2 Q. And that was -- you meant that when you  
3 said it, didn't you?  
4 A. Yes, ma'am.  
5 Q. You also commended the industry in that  
6 document for taking prompt and vigorous action  
7 relating to the cigarette controversy, didn't you?  
8 A. Yes, ma'am.  
9 Q. When the SAB was first created, you were,  
10 in essence, invited to join as a charter member;  
11 correct?  
12 A. Yes, ma'am.  
13 Q. And you served, I think you said  
14 yesterday, for a period of about ten years; is that  
15 correct?  
16 A. Yes, ma'am.  
17 Q. And you joined the SAB in 1954 because you  
18 felt that the smoking and health situation merited  
19 scientific attention?



20 A. Yes, ma'am.  
21 Q. And I think you said yesterday that it's  
22 your understanding you were invited to join the SAB  
23 because of your interest in the smoking and health  
24 problem; is that correct?

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1 A. That was my understanding. Yes, ma'am.  
2 Q. Okay. You weren't predisposed in favor of  
3 cigarettes or the tobacco industry at the time you  
4 joined the SAB or any other time, were you?  
5 A. No, ma'am.  
6 Q. In fact, you had serious questions as to  
7 whether or not cigarettes caused cancer and other  
8 disease when you joined the SAB; is that correct?  
9 A. Yes, ma'am.  
10 Q. None of the original members -- I think  
11 you said yesterday you knew the original members of  
12 the SAB; is that correct?  
13 A. Yes, ma'am.  
14 Q. And none of the original members of the  
15 SAB, to your knowledge, were predisposed towards  
16 cigarettes or the tobacco industry; true?  
17 A. I would have no knowledge of that.  
18 Q. And during your tenure on the SAB, isn't  
19 it true that all of the board members had a genuine  
20 concern with regard to whether or not cigarettes  
21 caused lung cancer and other diseases?  
22 A. Yes, ma'am.  
23 Q. So to the best of your knowledge, neither  
24 you nor any other member of the original SAB was

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1 selected because they were predisposed to favor  
2 cigarettes or the tobacco industry; correct?  
3 A. Not to my knowledge.  
4 Q. During the ten-year period that you were  
5 on the SAB, all of the SAB members who served with  
6 you had healthy investigative minds; is that  
7 correct?  
8 A. Can I see that list again? Define  
9 "healthy investigative mind." It's a term I have  
10 never heard before.  
11 Q. Well, they were interested in finding out  
12 the answers to the scientific questions; is that  
13 correct?  
14 A. Yes, ma'am.  
15 Q. And it was your understanding that they  
16 had a sincere concern with regard to whether or not  
17 cigarettes caused lung cancer and other health  
18 problems?  
19 A. Yes, ma'am.  
20 Q. And you wouldn't want to work with  
21 somebody who didn't have a sincere concern as to  
22 those issues on this committee; is that correct?  
23 A. Yes, ma'am.  
24 Q. That's correct?

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1 A. Yes, ma'am.  
2 Q. You stated yesterday that you left CTR  
3 because you were concerned that research was being  
4 funded through routes other than grants from the

5 SAB?

6 A. That was one of the reasons, yes, ma'am.

7 Q. Other than that, why did you leave?

8 A. Well, the membership had changed. The  
9 state of knowledge was such that there was a  
10 complete and total conflict between the economics of  
11 tobacco and the scientific statement. From 1954 to  
12 1964, the progress and research in smoking and  
13 health was analogous to the spectacular progress in  
14 all other areas of health.

15 Many of the issues, as you very correctly  
16 pointed out, at the time I went on the board were to  
17 some degree unanswered, some unresolved, some  
18 questions really hadn't been formulated yet. But by  
19 1964, it was clear that what the tobacco industry  
20 was saying was entirely incompatible with the state  
21 of the art of tobacco and health.

22 Q. All right. By tobacco industry, do you  
23 mean tobacco companies?

24 A. Yes, ma'am.

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1 Q. And those are tobacco company statements  
2 that you're referring to?

3 A. Yes, ma'am.

4 Q. Can you explain to me your concern about  
5 funding being received from routes other than grants  
6 from the SAB?

7 A. Oh, I surely can. It flew in the face of  
8 what Mr. McComas said, what the Tobacco Industry  
9 Research Council published in the universal press  
10 when the formation of the committee was announced.  
11 The template for the granting of funds was to be, as  
12 I said yesterday, analogous to the study sections of  
13 the National Institutes of Health, the advisory  
14 committees to the American Cancer Society, the Damon  
15 Runyan Cancer Fund, and in other areas of disease,  
16 as well. Polio, the infantile paralysis fund,  
17 muscular dystrophy. There is a procedure that is  
18 universal, if grant support is to be predicated on  
19 the merit of the application.

20 Q. Right. Exactly what did you understand  
21 had changed about the funding?

22 A. That all research funds relating to the  
23 scientific aspects of tobacco and health that were  
24 not expended internally were to go through the

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1 approval -- the review and approval route of the  
2 Science Advisory Board.

3 Q. And that's what you understood had  
4 changed?

5 A. It surely had.

6 Q. And how had it changed?

7 A. Because I was reading in the scientific  
8 literature -- and again, we are a closed community  
9 in the sense -- a contained community in the sense  
10 of all researchers virtually knowing one another by  
11 virtue of attending annual conferences. I was  
12 reading reports in the literature -- and if you ask  
13 me to remember it for the moment, I can't --  
14 supported by the tobacco industry when, in fact, it  
15 either had not been reviewed by the tobacco industry

16 and, in fact, some that were disapproved by the SAB,  
17 that reported funding by the tobacco industry.

18 MR. MOTLEY: Excuse me. He said "tobacco  
19 industry."

20 MS. TEDDER: I'm just going to clarify it.

21 MR. MOTLEY: Thank you.

22 Q. When you say you were reading articles, I  
23 want to make sure I understand what you said. So if  
24 I mischaracterize it, you let me know, because

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1 Mr. Motley and I, I think, are both confused on  
2 this.

3 When you say you were reading articles in  
4 scientific journals that funding was ascribed to,  
5 you said the tobacco industry. Did you mean the  
6 SAB?

7 A. No. Supported in part by the tobacco  
8 industry as the official designation in the bug  
9 below the first page of the article.

10 Q. Now, supported in part by the tobacco  
11 industry? That's the language you recall?

12 A. Yeah. That's the language in the  
13 journals.

14 Q. Okay. And you read that in journals?

15 A. Yes, ma'am.

16 Q. All right. Now, that was not the SAB? Is  
17 that what you're --

18 A. Correct.

19 Q. Can you tell me the names of any of those  
20 articles?

21 A. No, not offhand.

22 Q. Can you tell me when you first saw them?

23 A. I couldn't even recall the time.

24 Q. Do you know how many projects you thought

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1 were -- or articles were funded in that fashion?

2 A. I do not know.

3 Q. Is it your position that the only way the  
4 tobacco companies could fund research was through  
5 the SAB?

6 A. Research that they purported to be  
7 objective, high-quality, and ready to be accepted by  
8 peers.

9 Q. So is the answer yes, the only way to fund  
10 research was through the SAB?

11 A. In the area of tobacco and health, yes,  
12 ma'am. And this was by their own statement.

13 Q. And what statement was that?

14 A. When I was hired, that the Science  
15 Advisory Board would be the route through which the  
16 tobacco industry -- tobacco companies, I don't know  
17 what the right term is -- would be supported.

18 Q. Did they tell you that was the only way  
19 research would be supported?

20 A. I can't recall.

21 Q. So you don't know whether they did or they  
22 didn't?

23 A. That's correct.

24 Q. And if the record reflects that's not the

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1 only way, they didn't say that's the only way  
2 research would be reported, you wouldn't have any  
3 reason to dispute that?

4 A. I would -- rephrase the question so I'm  
5 sure I understand what you mean.

6 Q. I said, if the record reflects that they  
7 didn't say the only way research would be funded was  
8 through the SAB, you wouldn't have any reason to  
9 dispute that?

10 MR. MOTLEY: Object to form.

11 A. Oh, no, but I wouldn't be on the  
12 committee, either, and most of the other members.

13 As long as you're asking my opinion about  
14 other members earlier, did they think -- were they  
15 sincere and so on, let me give you an opinion about  
16 my attitude towards the other members. I doubt that  
17 a majority would have been on the committee.

18 Q. What do you mean, you doubt a majority  
19 would have been on the committee?

20 A. If, indeed, there were routes other than  
21 the SAB for the support of tobacco and health  
22 through the TIRC or the CTR.

23 Q. All right. Can you tell me the names of  
24 any individuals who received funding in that  
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1 fashion?

2 A. No, but I could get them. I know that. I  
3 don't remember offhand.

4 Q. Do you know when anyone received any of  
5 the money that you're talking about?

6 A. Again, I couldn't remember. I can't  
7 recall the dates.

8 Q. Is there anything specific at all you can  
9 tell me about that funding that was not through the  
10 SAB, that you believe is not through SAB?

11 A. There was material that was published in  
12 scientific literature.

13 Q. But that material didn't say it was being  
14 funded by the CTR, did it?

15 A. I'd have to look.

16 Q. Well, I'm trying to understand your  
17 concern, Dr. Kotin.

18 A. My concern --

19 Q. So if your concern is -- I'm just trying  
20 to understand, so you correct me if I'm wrong. If  
21 your concern is that you were reading research -- or  
22 is your concern that you were reading research or  
23 you were reading articles, you said, in scientific  
24 journals, is your concern that -- I mean, I  
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1 understand most scientific journals at the bottom  
2 have a line or somewhere in the journal which, you  
3 know, thanks so-and-so entity for funding or  
4 so-and-so company for contributing.

5 Is it your concern that those articles  
6 said research was being funded by the CTR and  
7 approved by SAB that, in fact, weren't?

8 A. No, they never said approved by SAB. They  
9 said they were funded in part -- or I don't know --  
10 by the tobacco industry.

11 Q. Did it say it was funded by CTR?

12 A. I would have to go back and look, but I --  
13 Q. Is that your recollection? I'm trying to  
14 understand what generated the concern. Is it --  
15 A. The concern was that I began to see --  
16 "began to see" is perhaps a -- I saw research being  
17 reported, supported by the industry, which was  
18 research which had not been endorsed by the SAB.  
19 Stated differently, research that had  
20 failed the -- to hurdle the SAB criteria for support  
21 was being reported, and that end run was, I think,  
22 clearly -- well, not "I think." I know clearly  
23 unacceptable to me.

24 Q. And that, obviously, was of great concern  
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1 to you?

2 A. Clearly unacceptable.

3 Q. But as we sit here today, you cannot tell  
4 me the name of one article, research or entity --  
5 let me finish my question, Dr. Kotin -- that's of  
6 concern to you. You came here today to talk about  
7 these issues, you talked to Mr. Motley about them  
8 yesterday; correct? And as we sit here today, you  
9 cannot tell me the name of one researcher, entity,  
10 or anyone else, or the name of an article that was  
11 funded in this fashion; is that correct?

12 A. That's correct. But let me add, if you  
13 give me your address, I will mail you those.

14 Q. Okay. Well, I'm here to talk about it  
15 today.

16 A. I know that, young lady, but...

17 Q. Okay. Now, if the tobacco companies did  
18 fund other research, do you have any personal  
19 knowledge that that somehow affected other research  
20 that CTR did?

21 A. I do not have that knowledge.

22 Q. You don't have any personal knowledge that  
23 that happened?

24 A. No, ma'am.

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1 Q. If the other funded research that you  
2 believe was funded through an entity other than CTR,  
3 but by the tobacco industry, ended up in a peer  
4 review journal, would that be inappropriate?

5 A. From the point of view of the scientific  
6 content, not inappropriate. Totally inappropriate  
7 in violation of the circumstances that I understood  
8 when I went on the SAB.

9 Q. Dr. Kotin, I'm going to hand you what's  
10 been marked as Kotin Exhibit F.

11 (Exhibit F marked.)

12 Q. And I'm going to ask you to take a look at  
13 that and I think that that is a letter dated  
14 November 26th, 1965, from you to Dr. Lynch; is that  
15 correct?

16 A. Correct.

17 Q. Okay. Now, do you need a minute just to  
18 read through that?

19 A. Yeah.

20 Q. Okay.

21 A. All right.

22 Q. Okay.

23 MR. MOTLEY: Can you let him finish  
24 reading?

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1 MS. TEDDER: I'm sorry. Take all the time  
2 you need, Dr. Kotin.

3 A. Yes, ma'am.

4 Q. Does this let -- you sent -- you recognize  
5 this letter?

6 A. Yes, ma'am.

7 Q. It's a letter that you sent to Dr. Lynch;  
8 is that correct?

9 A. Correct.

10 Q. And you were resigning from the SAB; is  
11 that correct?

12 A. Correct.

13 Q. Okay. Does this document say the reason  
14 for your resignation was your schedule at the  
15 National Cancer Institute and your inability to  
16 attend SAB meetings?

17 A. This was one of the reasons that I -- and  
18 this was the reason that I gave Dr. Lynch.

19 Q. I'm sorry?

20 A. Yes, this is the reason that I gave  
21 Dr. Lynch.

22 Q. All right. And does this document, in  
23 fact, say, "A matter of great concern to me has been  
24 my inability to attend any meetings of the

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1 Scientific Advisory Board during the past year.  
2 This has been particularly distressing since one of  
3 my rules of life is that I participate in any  
4 organization to the extent required or,  
5 alternatively, resign."

6 A. Yes, ma'am.

7 Q. "Perhaps the most impelling aspect of my  
8 concern is the fact that I do not foresee a  
9 reduction in the demands of my time, so that I  
10 seriously doubt the future will be any kinder than  
11 the past in making it impossible for me to attend  
12 meetings."

13 Is that what that document says?

14 A. Yes, ma'am.

15 Q. And that's what you told Dr. Lynch when  
16 you were resigning?

17 A. Yes, ma'am.

18 Q. In fact, you left the SAB on good terms,  
19 and in this letter of resignation you encouraged the  
20 SAB to continue forwarding you grant applications  
21 for your review from time to time, you said, as they  
22 may fall within your area of expertise; is that  
23 correct?

24 A. I left the SAB on good terms with its

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1 members and with the distress with the tobacco  
2 industry that I have articulated many times around  
3 this table. The letter I wrote -- may I finish my  
4 answer, please?

5 Q. Sure.

6 A. The letter I wrote to Dr. Lynch was a  
7 letter from one professional to another for whom I

8 have high regard, for whom I would gain nothing in  
9 pointing out things that were either obvious to them  
10 or not obvious. This is not a letter from me to the  
11 tobacco industry, the CTR or anything. It is a  
12 letter from me to a very, very close and dear  
13 friend, and a highly respected professor.

14 Q. Well, let me ask you a couple of things.  
15 One. In this letter of resignation, you didn't  
16 express any dissatisfaction or displeasure with CTR  
17 or the SAB; is that correct?

18 A. I never would to a fellow professional.

19 Q. And you didn't express any concern or  
20 displeasure about the tobacco industry or tobacco  
21 companies, did you?

22 A. No, ma'am, because at this time I did not  
23 know of how I could communicate with the tobacco  
24 industry. This is a personal letter from me to

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1 Dr. Lynch. It is addressed to him as chancellor and  
2 professor of pathology. It is not addressed to him  
3 as a chairman, it is not addressed to him as  
4 anything other than a peer.

5 Q. And Dr. Kotin, you knew a number of people  
6 who worked at tobacco companies; isn't that correct?

7 A. Yes.

8 Q. And you could have written a letter to  
9 those people expressing your dissatisfaction; isn't  
10 that correct?

11 A. I wouldn't know to what end that would do  
12 it, other than --

13 Q. Well, nothing would have precluded you  
14 from writing that letter --

15 MR. MOTLEY: Excuse me. Excuse me.  
16 You're talking over him. He was trying to  
17 finish his answer.

18 MS. TEDDER: I'm sorry.

19 Q. Go ahead if you weren't through.

20 A. I write letters, as we all do, with a goal  
21 in mind for some productive end. There would be no  
22 productive end in my writing a letter to Dr. Lynch  
23 expressing my dissatisfaction with the tobacco  
24 industry.

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1 Q. And you didn't write a letter to the  
2 tobacco industry expressing your dissatisfaction,  
3 did you?

4 A. I did not.

5 Q. And in all the times you testified before  
6 Congress, you never expressed to Congress any  
7 dissatisfaction with the tobacco industry or the way  
8 that it conducted research, did you?

9 A. Correct.

10 Q. And you never expressed any  
11 dissatisfaction to Congress to the CTR or the SAB;  
12 is that correct?

13 A. Correct.

14 Q. And you over time worked closely with  
15 people from the National Institutes of Health, the  
16 National Cancer Institute, and other federal  
17 agencies; isn't that correct?

18 A. Correct.

19 Q. And isn't it also correct that during the  
20 time you were on the SAB and after that time, that  
21 the CTR and people on the SAB worked closely with  
22 those entities; isn't that correct?

23 A. Yes, ma'am, as does everybody.

24 Q. And you were on committees where members

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1 of the CTR and the SAB were also present as members  
2 of those committees; isn't that correct?

3 A. That's correct.

4 Q. And that postdated your time on the SAB;  
5 is that correct?

6 A. Correct.

7 Q. For example, you worked on the Joint  
8 Committee on Smoking and Health; is that correct?

9 A. Yes, ma'am.

10 Q. And members from CTR SAB also worked on  
11 that committee; is that correct?

12 A. Yes, ma'am.

13 Q. And you all -- you believed that the work  
14 that that committee was doing was very important; is  
15 that correct?

16 A. Which committee?

17 Q. The Joint Committee on Smoking and Health.

18 A. Yes, ma'am.

19 Q. Okay. And you didn't express any  
20 dissatisfaction to anyone on that committee with the  
21 tobacco industry or CTR or SAB; is that correct?

22 A. Who am I to impugn the motives of my  
23 fellow members of CTR or members of the commission?  
24 These were -- they have their own figures, their own

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1 criteria, their own reasons for doing or not doing  
2 things.

3 So what you're asking is entirely, as far  
4 as I'm concerned, irrelevant to my relationship to  
5 the tobacco industry.

6 Q. Well, Dr. Kotin, I'm just trying to  
7 establish what you did or didn't do.

8 A. And I'm trying to explain why I did or  
9 didn't do certain things.

10 Q. Does this letter, which you still have in  
11 front of you, say, "To adequately describe what  
12 being on the board has meant to me would require  
13 reams of paper and expository skills that I do not  
14 possess. My participation in the activities of the  
15 board can best be summed up by reassuring you that  
16 it has been one of the most stimulating experiences  
17 I have had during the past decade"?

18 A. It sure was, when I think that little Paul  
19 Kotin was on the committee with Dr. Kenneth Lynch,  
20 Dr. Stanley Reimann, Dr. McKeen Campbell, Dr. Leon  
21 Jacobson, all of whom were older than I am, farther  
22 along in their careers than I was, models for me in  
23 many extents and situations and so on.

24 So again, it's the ad hominem relationship

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1 I had with members of the committee that I was  
2 expressing here, and this is why the letter was  
3 addressed to him.



4 Q. Dr. Kotin, during the time that you served  
5 on the SAB from 1954 to 1964, isn't it true that you  
6 believe that the research that was funded was of a  
7 high quality?

8 A. Absolutely.

9 MR. MOTLEY: Excuse me, ma'am. You said a  
10 moment ago that this was his letter of  
11 resignation and it's dated November 1965. You  
12 just said he quit serving in 1964.

13 MS. TEDDER: I'm sorry. Thank you for  
14 correcting me, Mr. Motley. I believe the  
15 record reflects it was 1965.

16 Q. So during that what is approximately  
17 11-year period, you believe that the research that  
18 CTR funded was very high-quality, relevant research?

19 A. Research funded through the review process  
20 of the SAB. Yes, ma'am.

21 Q. And that none of that research was  
22 censored or suppressed; is that correct?

23 A. There was -- I didn't do any censoring or  
24 suppressing, yes, ma'am.

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1 Q. And you don't have any personal knowledge  
2 of any research being censored or suppressed; is  
3 that correct?

4 A. I do not have any such knowledge.

5 Q. And it's your understanding that nobody  
6 told -- during the time that you were on the SAB  
7 from 1954 to 1965, nobody told the SAB what research  
8 to fund or not fund; is that correct?

9 A. Correct.

10 Q. Okay. And isn't it also true that during  
11 the time that you were on the SAB, from 1954 to  
12 1965, that you and the other SAB members, to the  
13 best of your knowledge, believed that there were  
14 important issues that had been unanswered; is that  
15 correct?

16 A. And many, many important issues had been  
17 answered, as well. That's correct.

18 Q. Well, one important issue that the SAB  
19 thought wasn't proved was causation; is that  
20 correct?

21 A. There was sharp disagreement on the board  
22 on that.

23 Q. Well, isn't it, in fact, true that members  
24 of the board didn't feel the issue had been proven

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1 as to whether or not tobacco smoke caused -- whether  
2 or not cigarette smoking caused disease?

3 A. I'm just looking for the right words. You  
4 couldn't be more incorrect if you tried.

5 MR. MOTLEY: Couldn't be more what?

6 A. Incorrect if you tried. There was no  
7 doubt by any member of the committee that exposure  
8 to tobacco health was associated with an enhanced  
9 risk of tobacco.

10 MR. BYASSEE: Can we take a break?

11 MS. TEDDER: Oh, sure, I'm sorry.

12 MR. BYASSEE: Take about ten?

13 (A recess was taken.)

14 Q. Dr. Kotin, we've been talking about the

15 CTR and your role in the SAB.  
16 A. Yes, ma'am.  
17 Q. You always believed during the entire time  
18 of your tenure with the SAB that the research done  
19 was always relevant to scientific issues; is that  
20 correct?  
21 A. Yes, ma'am.  
22 Q. And that it was of the highest quality;  
23 correct?  
24 A. Correct.

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1 Q. Your concern is with funding of research;  
2 is that correct?  
3 A. Partly. Funding and the mechanism whereby  
4 research is approved.  
5 Q. Okay. You felt that the companies were  
6 funding research through an external mechanism other  
7 than CTR SAB; is that correct?  
8 A. Yes, ma'am.  
9 Q. Even though you can't tell me examples of  
10 any of that research today, that's what you thought  
11 was happening; correct? You don't have any concerns  
12 about the content of the research that the CTR was  
13 doing while you were on the SAB; is that correct?  
14 A. SAB-approved research.  
15 Q. Yes, that's what I'm referring to.  
16 A. Yes, ma'am.  
17 Q. Don't have any problems at all with that?  
18 A. Yes, ma'am.  
19 Q. Good-quality research?  
20 A. The implication is that I don't  
21 necessarily agree with it, but the quality is there.  
22 That distinction applies to every medical career and  
23 every medical publication. A high-quality paper may  
24 or may not be -- have conclusions with which I agree

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1 or disagree.  
2 Q. And you felt -- you don't have any reason  
3 to believe that if that research that you believe  
4 was being funded by the tobacco industry, as opposed  
5 to CTR -- you don't have any reason to believe that  
6 affected CTR research, CTR SAB research; correct?  
7 A. I don't know what you mean by that.  
8 Affected it how?  
9 Q. You don't have any personal knowledge that  
10 it somehow took something away from the other -- the  
11 research that CTR was funding?  
12 A. It took something away in the sense that  
13 the implication of SAB CTR research was reviewed by  
14 the peer panel. So the opportunity for confusion of  
15 reported research as being -- having gone through  
16 the routine of SAB approval may not have done.  
17 Q. But you don't understand that research  
18 indicated that it was funded by the CTR. The  
19 external research that you have concerns about --  
20 you told me earlier -- if I understood you  
21 correctly, you're not saying that that was  
22 improperly ascribed to CTR.  
23 MR. MOTLEY: Object to form.  
24 A. No. What I'm saying is this. That the

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1 bug at the bottom, the scientific -- "funded by the  
2 CTR," I don't know -- I'd have to go back and see  
3 whether the bug said in earlier days, "Funded by SAB  
4 CTR" or -- there wasn't a CTR then. "SAB TIRC," or  
5 "Funded by TIRC."

6 That is not a subtle distinction. I think  
7 it's a critical distinction. If indeed one had  
8 said, "Funded by the SAB," that was so.

9 Q. All right. And the research that the SAB  
10 funded was research that was relevant to smoking and  
11 health issues; correct?

12 A. Yes, ma'am.

13 Q. Isn't it true that periodically the CTR  
14 issued -- or TIRC, I guess, as it was known  
15 originally during the time that you started on it,  
16 issued statements on causation periodically?

17 A. Yes, CTR did.

18 Q. As well as the TIRC?

19 A. Yes, ma'am.

20 Q. Either way you name the entity?

21 A. Yes, ma'am.

22 Q. TIRC, CTR, same thing?

23 A. All right.

24 Q. And those statements, in essence, said

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1 that causation hadn't been demonstrated  
2 scientifically; isn't that correct?

3 MR. MOTLEY: Object to form, unless we  
4 clarify if you're talking about SAB or CTR as  
5 an entity.

6 A. I think that the crucial and critical --

7 MS. TEDDER: I'm talking about statements  
8 issued by the TIRC.

9 MR. MOTLEY: Okay.

10 A. The SAB, as I understand it -- I know --  
11 was -- composed just one component of TIRC. And  
12 just to say "TIRC" would erroneously, I believe,  
13 implicate or imply that the SAB of the TIRC endorsed  
14 it. There were other elements in the composition of  
15 TIRC.

16 Q. Well, just to clarify, my question said,  
17 isn't it true that statements were issued on  
18 causation periodically by the TIRC?

19 A. Yes, yes.

20 Q. Okay. Thank you. And those statements,  
21 in essence, said that causation had not been proven;  
22 is that correct?

23 A. Those statements were incorrect. Yes.

24 It's correct.

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1 Q. My question is a yes-or-no answer, Dr.  
2 Kotin. Did they say it hadn't been proven?

3 A. I can't answer that by yes or no, because  
4 of the implications of the question.

5 Q. All right. Is it your understanding that  
6 the TIRC, during the time that you were on it from  
7 1954 to 1965, made an annual report every year?

8 A. Yes, ma'am.

9 Q. And you were familiar with those annual  
10 reports as they came out?

11 A. Not until I saw them printed, and the  
12 record will show that somewhere in the TIRC archives  
13 is my protest at not having had an opportunity to  
14 see the report as reported in the press.

15 Q. And what protest is that that you're  
16 referring to?

17 A. That the issue of causation in many  
18 areas -- the total denial of causation was  
19 incorrect, unsupportable.

20 Q. And to whom did you make that statement?

21 A. W.T. Hoyt.

22 Q. All right. And when was that?

23 A. Early in the days of the -- I would have  
24 to -- I don't have dates, but it was after the -- it  
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1 would be the first report that made this  
2 misstatement. But whether it was '57, '58, or '59,  
3 I can't remember the year.

4 Q. All right. And you believe that you wrote  
5 Dr. Hoyt about that in that year?

6 A. Yes, ma'am.

7 Q. And what did you say?

8 A. I essentially told him that I think it was  
9 egregious that a report was -- a report was made,  
10 and that I -- and I couldn't speak for other members  
11 of the committee. That I, as a member of the  
12 committee, felt I should have had an opportunity to  
13 review it.

14 Q. Did you write to anybody else?

15 A. No, ma'am.

16 Q. Tell anybody else? Okay.

17 A. Mr. Hoyt was the executive secretary of  
18 the committee, and was the contact. I don't know  
19 whether Mr. Hoyt is alive or not, but if he were...

20 Q. Dr. Kotin, do you recall the 1964 surgeon  
21 general's report?

22 A. Yes, ma'am.

23 Q. And do you recall that when that report  
24 came out, the SAB felt it was important to make a

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1 distinction between possible causal function and  
2 risk?

3 A. I don't recall.

4 MS. TEDDER: Let me have something marked  
5 for purposes of identification. Would you mark  
6 that? We'll have to see if we have another  
7 copy. I only have two of these.

8 MR. MOTLEY: Can I look at it real quick?

9 MS. TEDDER: You can sure take a look at  
10 it.

11 (A discussion was held off the record.)

12 MR. MOTLEY: You feel like you can go on,  
13 sir?

14 THE WITNESS: Beg pardon?

15 MR. MOTLEY: Do you feel like you can go  
16 forward?

17 THE WITNESS: For a while, yes, sir. I'm  
18 slowing down, though.

19 MR. MOTLEY: That is what he said  
20 yesterday.

21 MR. BYASSEE: We're going to have to stop

22 at the two and a half hours so he can get to  
23 bed. So that's about another 20, 25 minutes or  
24 so.

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1 (Exhibit G marked.)

2 Q. Now, Dr. Kotin, while you were on the SAB,  
3 they kept meeting minutes of the meetings; is that  
4 correct?

5 A. Yes, ma'am.

6 Q. And do you know who kept those minutes?

7 A. I assume Mr. Hoyt, but I don't know.

8 Q. And isn't it true that you also had the  
9 opportunity to review the minutes of each meeting?

10 A. Not that I can recall.

11 Q. If the record reflects that to be the  
12 case, would you have any reason to dispute that?

13 A. No, ma'am.

14 Q. Okay. I'm going to show you what's been  
15 marked as Exhibit G and ask you if that's a copy of  
16 the SAB meeting minutes for May 25th and 26th, 1963.

17 MR. MOTLEY: 1963 or 1965?

18 MS. TEDDER: It says 1963.

19 MR. MOTLEY: Okay.

20 A. Yes, ma'am.

21 Q. And I'm going to turn your attention to  
22 the bottom of the very last page, which I think is  
23 the third page.

24 A. Yes.

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1 Q. Was that document highlighted?

2 MR. MOTLEY: Somebody did. We didn't. I  
3 had never seen it until this deposition. You  
4 can substitute a clean copy.

5 MS. TEDDER: That's all right.

6 Q. I'm just referring you to the  
7 second-to-the-last full paragraph on that page.  
8 Does it say that the board approved the following  
9 statement? "It further believes that possible  
10 causal function of any suspected factor should be  
11 clearly distinguished in research from risk of  
12 possible contributory function of that factor in the  
13 development of diseases once established in the  
14 individual"?

15 Did read that correctly?

16 A. You read it correctly. First of all --

17 Q. Dr. Kotin, there's no pending question  
18 right now.

19 MR. MOTLEY: Wait a minute, Counsel. He  
20 got a chance to explain his answer.

21 MS. TEDDER: I said, "Did you read it  
22 correctly?" It's a yes-or-no answer.

23 A. I was not at that meeting, and any  
24 sophisticated interpretation of that would find that

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1 it does no violence to the positions I have taken.

2 Q. Well, it makes it -- takes -- makes a  
3 distinction between possible causal function and  
4 increased risk, doesn't it?

5 A. I'd be glad to give you a lecture on how  
6 those are two entirely compatible -- even though

7 there are distinctions in the words.  
8 Q. Well, that's what it says, doesn't it,  
9 makes a distinction between causal function and  
10 increased risk; is that correct?  
11 A. That's what it says. It doesn't  
12 necessarily mean it's right.  
13 Q. And it was important enough -- it was  
14 important enough for the SAB to issue that position;  
15 is that correct?  
16 A. In the absence of Dr. Paul Kotin.  
17 Q. And Dr. Kotin, after having reviewed these  
18 meeting minutes, did you let Dr. Hoyt or anyone else  
19 know that you disagreed with that statement?  
20 MR. MOTLEY: Object to the form.  
21 A. I can't recall whether it was in response  
22 to this, but the record will show many, many  
23 disagreements between Dr. Paul Kotin, and now I'm  
24 beginning to understand why Dr. Paul Kotin was

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1 considered dangerous, the most dangerous.  
2 Q. Dr. Kotin, isn't it a fact the SAB never  
3 said the CTR should tell the advisory committee that  
4 causation had been established?  
5 A. Not that I'm aware of.  
6 Q. They never said that?  
7 A. I don't recall.  
8 Q. Wouldn't you recall if they said somebody  
9 should tell the advisory committee that causation  
10 had been established?  
11 A. I don't know if I was at that meeting, as  
12 you can see.  
13 Q. I'm not asking about a specific meeting.  
14 I'm saying, to the best of your recollection, within  
15 your personal knowledge as we sit here today, isn't  
16 it true that the SAB never said the CTR should tell  
17 the advisory committee that causation had been  
18 established?  
19 A. Repeat that again.  
20 Q. Isn't it true --  
21 A. Yes.  
22 Q. -- that the SAB never said CTR should  
23 tell the advisory committee that causation had been  
24 established?

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1 A. I hope you can rephrase it, because I  
2 don't understand it and I don't think --  
3 Q. Well, you were on the SAB; isn't that  
4 correct?  
5 A. Correct.  
6 Q. Okay. And the SAB here is approving a  
7 statement, a position; isn't that correct?  
8 A. Yes.  
9 Q. And this position says there's a  
10 distinction between causal function and risk;  
11 correct?  
12 MR. MOTLEY: Object.  
13 Q. That's what it says?  
14 MR. MOTLEY: Object to form. Read the  
15 whole thing.  
16 MS. TEDDER: I'm sorry?  
17 MR. MOTLEY: You didn't read the rest of

18 the sentence.  
19 MS. TEDDER: Well, I can read the whole  
20 sentence.  
21 MR. MOTLEY: Please.  
22 Q. Isn't it correct that the document says,  
23 "It further believes that possible causal function  
24 of any suspected factor should be clearly  
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page 222  
1 distinguished in research from risk of possible  
2 contributory function of that factor in the  
3 development of a disease once established in the  
4 individual?" Is that correct?  
5 A. That's what it says there. It's not  
6 correct.  
7 Q. And to the best of your knowledge, the  
8 SAB -- I mean, I understand you're telling me that  
9 today, that you think that's not correct. But it  
10 was obviously important enough for the SAB to issue  
11 it at this point in time, which is May 25th and  
12 26th, 1963; correct?  
13 A. Correct.  
14 Q. And that's why it's in the meeting  
15 minutes; correct?  
16 A. Correct.  
17 Q. And isn't it true that the SAB never said  
18 CTR should tell the advisory committee that  
19 causation had been established? You're not aware of  
20 them ever making that statement in any meeting  
21 minutes; is that correct?  
22 A. If I understand you, you're saying that  
23 the CTR never tried to dictate to the -- as I  
24 said -- I guess I'm obtuse. I know I'm obtuse.  
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page 223  
1 What is the -- repeat the question again. I want to  
2 understand it so that I can give you a correct  
3 answer.  
4 Q. All right. Well, we can come back to that  
5 one in just a minute. But isn't it true that in  
6 fact, Dr. Clarence -- I mean, that the CTR annual  
7 report said every year that the case against smoking  
8 was not proven; is that correct?  
9 A. The report may have said that, yes.  
10 Q. Okay. And you never wrote to Dr. Clarence  
11 Cook Little, for example, and told him that the  
12 statement in the annual report was not made in good  
13 faith, did you?  
14 A. I never wrote him, but I certainly told  
15 him.  
16 Q. Well, there's no record to that effect, is  
17 there?  
18 A. I'm sure in terms of my discussions with  
19 Dr. Little, no. But as far as my having written, I  
20 don't recall. I don't recall at all having written.  
21 Q. All right. And I'm going to show you what  
22 we'll mark as Exhibit H.  
23 (Exhibit H marked.)  
24 Q. And I'm going to ask you -- which I will  
page 223  
page 224  
1 tell you is the 1960 report of the scientific  
2 director, and you can take a minute to look at

3 Exhibit H, Dr. Kotin, if you would.  
4 A. Sure. Yes.  
5 Q. All right. Have you had the opportunity  
6 to look at that?  
7 A. Scanned it, yes, ma'am.  
8 Q. Well, I'm just going to talk about a  
9 couple of things. I'm going to ask you to take a  
10 look at page 5.  
11 A. Yes, ma'am.  
12 Q. Under the heading that I'll quote,  
13 "Causation theory of smoking unproved." Is that  
14 what that says?  
15 A. It sure does.  
16 Q. And it says, "The continued failure of  
17 evidence which is qualitatively different or of  
18 increased significance to appear leaves the  
19 causation theory of smoking in lung cancer, heart  
20 disease, and other ailments without clinical or  
21 experimental proof." Is that what that says?  
22 A. That's what it says.  
23 Q. And you never wrote Dr. Clarence Cook  
24 Little and said that position wasn't taken in good  
page 224  
page 225  
1 faith, did you?  
2 A. I never did.  
3 Q. All right. And isn't it true, Dr. Kotin,  
4 that in fact, in 1960, the SAB felt it was important  
5 to say there was -- there needed to be known more  
6 information -- excuse me. Strike that.  
7 In fact, isn't it true that in 1960 the  
8 SAB itself said they felt it was important to say  
9 more was needed to be known until the accumulated  
10 facts -- I'm sorry. I'm going to refer you to page  
11 13 --  
12 A. Yes, ma'am.  
13 Q. -- of this report. Do you see that?  
14 A. Yes, ma'am.  
15 Q. And there are a number of names listed at  
16 the bottom of that page; is that correct?  
17 A. Yes, ma'am.  
18 Q. And your name appears there; is that  
19 correct?  
20 A. Yes, ma'am.  
21 Q. Okay. And in the very last line of that  
22 statement, the last full paragraph on that page  
23 says, "The important thing is to keep on adding to  
24 knowledge until the cumulative facts provide the  
page 225  
page 226  
1 basis for a sound conclusion."  
2 Is that correct?  
3 A. That is correct.  
4 Q. And that was a statement by the SAB; is  
5 that correct?  
6 A. Yes, ma'am.  
7 Q. All right. Can I look at that for just a  
8 second?  
9 A. Oh, sure.  
10 (Witness conferred with counsel.)  
11 Q. Isn't it true, Dr. Kotin, that the SAB  
12 never said that sufficient facts were there to make  
13 a sound conclusion as to causation?



14 A. That report says they did. I disagree  
15 with it. My name is on there.  
16 Q. You wouldn't have allowed something to go  
17 out under your name if you thought it was wrong,  
18 would you?  
19 A. If I knew about it, no.  
20 Q. Is it your suggestion that you didn't know  
21 about a statement that went out under your own name?  
22 A. Many statements came out --  
23 Q. I'm sorry, did you want to review that?  
24 A. No, I don't need to review that.

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1 Q. I'm sorry, you were reaching for it. So  
2 you didn't review statements that went out under  
3 your name?  
4 A. Not all of them entirely.  
5 MR. MOTLEY: I didn't get a chance to  
6 object to the form of the question. But I do.  
7 Q. Doctor, I'm sorry --  
8 MR. BYASSEE: Just one moment, please.  
9 (Witness conferred with counsel.)  
10 Q. Dr. Kotin --  
11 MR. MOTLEY: Let me ask this question.  
12 MS. TEDDER: I'm sorry.  
13 MR. MOTLEY: Are you folks going to try to  
14 finish your two and a half hours today? Or no?  
15 Or are you going to take the position that you  
16 need to come back?  
17 MS. TEDDER: I suspect we're going to take  
18 the position that we need to come back.  
19 MR. MOTLEY: So you're not going to get  
20 done in ten minutes, David. I can tell the  
21 doctor is tired.  
22 MR. BYASSEE: The doctor is -- we've  
23 got --  
24 MS. TEDDER: I have just a couple or more

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1 quick questions. I could kind of reach a  
2 stopping point here today, if that's all right,  
3 Dr. Kotin?  
4 MR. BYASSEE: Why don't we do that?  
5 Q. Dr. Kotin, isn't it true that outside  
6 scientists, not connected with the tobacco industry,  
7 felt that the causal factor had not been proven?  
8 A. Yes, ma'am.  
9 Q. Do you know who Dr. Lewis Robbins was?  
10 A. I didn't know him, but I know the name,  
11 yes.  
12 Q. Okay.  
13 (Exhibit I marked.)  
14 Q. Dr. Kotin, I'm going to hand you what's  
15 been marked as Kotin Exhibit I, and if you need to  
16 take a minute to familiarize yourself with that,  
17 that's just fine.  
18 And just for the record, Exhibit I is  
19 entitled, "Medical Practice and Lung Cancer" by  
20 Lewis Robbins, MD; is that correct, Dr. Kotin?  
21 A. Yes, it is.  
22 Q. And I'm sorry, take all the time you need  
23 with that.  
24 A. I have looked at it, yes, ma'am.

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1 Q. All right. That article -- you can look  
2 at the first page at the bottom -- is dated February  
3 1962.

4 A. Yes, ma'am.

5 Q. And it also indicates that Lewis Robbins  
6 is chief of the cancer control program of the Public  
7 Health Service; is that correct?

8 A. Correct.

9 Q. All right. And that's what you knew him  
10 to be; is that correct?

11 A. Yes. I didn't know him, but I knew the  
12 job, yes.

13 Q. And isn't it true that that article  
14 basically takes the position that causation wasn't  
15 proven?

16 A. Not when he says, "Smokers are at a higher  
17 risk of lung cancer than are non-smokers. None or  
18 very few deny the validity of this evidence."

19 Q. Where are you looking at?

20 A. On the last page, under conclusions, C.

21 Q. I'm sorry, C.

22 A. On the top of the column, right here.

23 Q. I'm sorry. You'll have to point out to me  
24 where you're at.

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1 A. Right here.

2 Q. Okay. Now, he's making a distinction in  
3 this article between medical practitioners and  
4 medical investigators; is that right?

5 A. It's right that he makes the distinction,  
6 yes, ma'am.

7 Q. And for the medical investigator, he  
8 takes -- he reaches the conclusion that the evidence  
9 still does not add up to conclusive proof that  
10 cigarette smoking causes lung cancer; is that  
11 correct? He states that at the top of the next  
12 paragraph. I'm sorry, just to show you where I'm  
13 at --

14 A. He says that, and it's wrong.

15 Q. Well, that's my question. Was that a  
16 reasonable position for a medical investigator to  
17 take?

18 A. It was an ignorant position for a medical  
19 investigator to take, because it's wrong, and  
20 nothing more need be said about it.

21 Q. Isn't it true, Dr. Kotin, that  
22 well-respected scientists who were not connected to  
23 the tobacco industry wrote and stated publicly that  
24 causation was not proven?

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1 A. For every one that did that, I'll bet 100  
2 took the opposite position.

3 Q. Well, my question is: It's true that they  
4 wrote that it was not proven; is that correct?

5 A. But it's equally true that many, many,  
6 many, many times that number wrote that it was  
7 proven.

8 Q. And in fact, those independent  
9 well-respected scientists stated it wasn't proven

10 all the way up to the 1964 surgeon general's report;  
11 isn't that correct?

12 A. Again, it is correct that they stated it,  
13 and if we're weighing preponderance of evidence, the  
14 preponderance of evidence is so overwhelming that  
15 they're in such a tiny minority that really no  
16 credence can be given to it at all.

17 And that's what I have to say and that's  
18 it. I have lost my voice.

19 MR. BYASSEE: Okay.

20 MS. TEDDER: All right. Well, we will  
21 take the position that we're not done. We'll  
22 suspend, but not conclude, the deposition.

23 MR. BERNICK: We can do this off the  
24 record, on the record, any way you want. And

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1 the doctor doesn't have to be involved in the  
2 dialogue, either.

3 MR. BYASSEE: I think that's fine. Why  
4 don't we adjourn?

5 (The deposition recessed at 12:40 p.m.)

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PAUL KOTIN, M.D.

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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

ROBERT A. FALISE; LOUIS KLEIN, JR.; FRANK MACCIAROLA; and CHRISTIAN E.  
MARKEY, JR., as Trustees,

Plaintiffs,

Case No. -vs-

99 CV

7392 (JBW)

THE AMERICAN TOBACCO COMPANY; RJ REYNOLDS TOBACCO

COMPANY; B.A.T. INDUSTRIES, PLC; BROWN & WILLIAMSON TOBACCO  
CORPORATION; PHILIP MORRIS INCORPORATED;

LIGGETT, INC.; and LORILLARD TOBACCO COMPANY,

Defendants.

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CERTIFICATE OF COMPLETION OF DEPOSITION

I, MARY ABERNATHY SEAL, New Mexico CCR #69, DO HEREBY CERTIFY that on  
July 6, 2000, the deposition

of PAUL KOTIN, M.D. was taken before me at the request of, and sealed  
original thereof

retained by:

15  
16 MR. RONALD L. MOTLEY Attorney for the Falise Plaintiffs  
17 28 Bridgeside Boulevard Mount Pleasant, South Carolina 29464-1792  
18 I FURTHER CERTIFY that copies of this certificate  
19 have been mailed or delivered to the following Counsel of record and parties  
not represented by

20 Counsel:

21 MS. GAY L. TEDDER Attorney for the Defendant Lorillard  
22 1201 Main Street Kansas City, Missouri 66206  
23  
24

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1 MR. DAVID BERNICK Attorney for the Defendant Brown & Williamson  
2 200 E. Randolph Drive Chicago, Illinois 60601

3 I FURTHER CERTIFY that examination of this  
4 transcript and signature of the witness were waived by the witness and all  
parties present.

5 I FURTHER CERTIFY that the recoverable cost of the  
6 original and one copy of the deposition to Falise Plaintiffs is \$\_\_\_\_\_.

7 I FURTHER CERTIFY that I did administer the oath  
8 to the witness herein prior to the taking of this deposition; that I did  
thereafter report in

9 stenographic shorthand the questions and answers set forth herein, and the  
foregoing is a true and  
correct

10 transcript of the proceeding had upon the taking of this deposition to the  
best of my ability

11 I FURTHER CERTIFY that I am neither  
12 employed by nor related to any of the parties or attorneys in this case, and  
that I have no interest  
13 whatsoever in the final disposition of this case in any court.

14  
15 \_\_\_\_\_  
16 Mary Abernathy Seal Certified Court Reporter

#69 License Expires: 12/31/00  
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